

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	Docket#	
UNITED STATES OF AMERICA,	:	10-cr-594 (ERK)
	:	
- versus -	:	U.S. Courthouse
	:	Brooklyn, New York
JOSEPH YANNAI,	:	
Defendant	:	May 26, 2011
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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES SENIOR DISTRICT JUDGE

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Proceedings

1 THE CLERK: Be seated, counsel.

2 THE COURT: Bring in the jury.

3 THE CLERK: Bring your witness up.

4 (Witness takes the stand.)

5 THE CLERK: All rise.

6 (Jury enters the courtroom.)

7 THE CLERK: Please be seated.

8 MS. CESARE: Thank you.

9 CONTINUED CROSS-EXAMINATION

10 BY MS. CESARE:

11 Q. Good morning, Ms. Herzceg.

12 A. Good morning.

13 THE COURT: You're still under oath.

14 Q. Ms. Herzceg, when you flew to J.F.K. Airport on
15 February 18, 2009, did you have a backup plan?

16 A. No.

17 Q. What were you going to do if no one showed up to pick
18 up you up at the airport?

19 A. I believed in Mr. Yannai that he will pick me up.

20 Q. All right. But you had never met him in person;
21 correct?

22 A. No.

23 Q. You'd only -- and you had never been to his house
24 before; right?

25 A. No.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. You didn't have any kind of, you know, interview
2 before you flew to New York.

3 A. That's correct.

4 Q. So, you didn't know for sure that he was actually
5 going to show up and pick you up at the airport.

6 A. I was not sure.

7 Q. And what would you have done if no one showed up to
8 pick you up?

9 A. That's a good question.

10 Q. You had no plan.

11 A. I had no plan.

12 THE COURT: She's asked and answered it twice
13 already.

14 Q. Now you said that on the way to Joseph Yannai's
15 house, he held your hand in the car.

16 A. No. I put my hand on top of his hand.

17 Q. He asked you to do that?

18 A. Yes.

19 Q. And you agreed to do that?

20 A. Yes.

21 Q. And you left your hand on top of his hand for the
22 whole ride up to Pound Ridge?

23 A. No, I don't think so. I can't remember.

24 Q. Okay. Now when you got to Mr. Yannai's home on the
25 second day you were there, you started doing the research

Ms. Herczeg - Cross - Ms. Cesare

1 work; right?

2 A. No, the second day I didn't have to work.

3 Q. When did you start doing the computer research work?

4 A. On the 20th.

5 Q. So about, maybe your second or third day there?

6 A. The second.

7 Q. All right. And your job was to research churches;
8 right?

9 A. That's correct.

10 Q. And can you be more specific about the research work
11 you were doing?

12 A. There was a website called churchangel.com and it was
13 a list of thousands of churches. And it was contact
14 informations, website, for churches.

15 Q. So were you using that website to get contact
16 information for churches?

17 A. Yes.

18 Q. And were you then contacting personnel at the
19 churches?

20 A. No.

21 Q. Were you just recording the contact information for
22 the churches?

23 A. That's correct.

24 Q. And you did that every day for about three weeks;
25 right?

Ms. Herczeg - Cross - Ms. Cesare

- 1 A. Yes.
- 2 Q. And in a given day, about how many churches would you
- 3 research?
- 4 A. A day? Maybe a hundred.
- 5 Q. All right. So in the course of the week, you were
- 6 getting -- you got information about thousands of
- 7 churches; right?
- 8 A. Probably.
- 9 Q. And the information you got about each church, you
- 10 recorded in an Excel spreadsheet; is that right?
- 11 A. That's correct.
- 12 Q. And did you -- aside from that website you mentioned,
- 13 the church website, did you also go to the website for
- 14 each individual church?
- 15 A. If the website was listed, yes.
- 16 Q. Okay. And were you researching all type -- were you
- 17 researching specific denominations?
- 18 A. No, all kind of.
- 19 Q. So, Catholic churches; right?
- 20 A. Yeah.
- 21 Q. Protestant churches?
- 22 A. Uh-huh.
- 23 Q. Were you researching other religious institutions or
- 24 just Christian institutions?
- 25 A. I believe just Christianist (sic).

Ms. Herczeg - Cross - Ms. Cesare

- 1 Q. Okay. Now what was -- now Gisele was also working at
2 the same time that you were working; right?
- 3 A. Yes.
- 4 Q. And you guys worked in the same work area; correct?
- 5 A. Yes.
- 6 Q. Did you each have your own work station?
- 7 A. Yes.
- 8 Q. So you each had your own desk and computer to work
9 with; right?
- 10 A. Yes.
- 11 Q. And each of your computers was internet connected;
12 right?
- 13 A. Yes.
- 14 Q. And Joseph had his own desk.
- 15 A. Yes.
- 16 Q. Was Gisele also doing the church research?
- 17 A. Yes.
- 18 Q. And was she -- as far as you observed, was she doing
19 the exact same kind of research that you were doing?
- 20 A. Yes, as far as I know; yes.
- 21 Q. In the course of your research, did you do any
22 faxing?
- 23 A. No.
- 24 Q. Did you do any telephone work?
- 25 A. No.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. It was all internet work; right?

2 A. Yes.

3 Q. And was -- from what you witnessed, was Gisele also
4 contacting hundreds of churches a day or researching
5 hundreds of churches a day?

6 A. Yes.

7 Q. And did the two of you collaborate on -- did you both
8 put your research work into the same Excel spreadsheet?

9 A. No.

10 Q. So you had your own spreadsheet and she had her own
11 spreadsheet.

12 A. Yes.

13 Q. And by the end of three weeks, how many pages were in
14 this spreadsheet?

15 A. I have no idea.

16 Q. It must have been massive; right?

17 A. Yeah.

18 Q. And did you learn how to use Excel in Joseph Yannai's
19 home or was that a skill you had before you came to his
20 house?

21 A. I had the skill before.

22 Q. I am going to show you what's in evidence -- please
23 publish Defendant's Exhibit P-7.

24 Can you see that on your screen?

25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. All right. This is the glossy picture, so that
2 there's some hot spots but do you recognize what's in
3 this picture?

4 A. Yes, this is Mr. Yannai's office.

5 Q. This is the home office at Mr. Yannai's house?

6 A. Yes.

7 Q. And would the picture that -- would the chair that's
8 at the furthest end of this work space be Joseph Yannai's
9 work station?

10 A. Yes.

11 Q. And where was your work station; is it in this
12 picture?

13 A. Yes, this was mine, the nearest.

14 Q. The closer --

15 A. I mean the closer; yes.

16 Q. Okay. Did you always work at that same work station?

17 A. Yes.

18 Q. Now after about a week -- after about a week's time
19 in Mr. Yannai's house, he asked you to stop wearing your
20 bra; is that right?

21 A. Yes.

22 Q. And that first week, did you observe whether or not
23 Gisele wore her bra?

24 A. I don't remember.

25 Q. Did you talk to her about it?

Ms. Herczeg - Cross - Ms. Cesare

1 A. No.

2 Q. And when he asked you to stop wearing your bra, you
3 did stop wearing your bra; right?

4 A. Yeah.

5 Q. Okay. You certainly packed brassieres when you went
6 to his house; right? You had them.

7 A. Yes.

8 Q. He didn't take them away from you.

9 A. No.

10 Q. And when you got dressed in the morning, you were
11 alone in your private bedroom getting dressed; right?

12 A. Yes.

13 Q. So each morning when you decided not to wear a bra,
14 that was a decision you made yourself.

15 A. Not really.

16 Q. Well, you were all by yourself when you got dressed;
17 right?

18 A. I was -- I felt like I was under pressure.

19 Q. Would it be fair to say you were afraid you would
20 lose your job if you didn't wear the bra? I mean -- let
21 me rephrase that.

22 Would it be fair to say that you were afraid you
23 would lose your job if you chose to wear your bra; right?

24 A. That was his requirement.

25 Q. Well what did you think would happen if you didn't

Ms. Herczeg - Cross - Ms. Cesare

1 wear a bra?

2 A. I don't know what could have happened.

3 Q. Well, you were asked about this on direct yesterday;
4 weren't you?

5 A. Yes, I believe so.

6 Q. And when you talked about this yesterday, didn't you
7 agree that you were afraid that you would lose your job
8 if you did not follow Joseph's instructions?

9 A. I was afraid that I would have to leave.

10 Q. Which means -- that means the same thing as losing
11 your job; right?

12 A. No, it means that I would be on the street.

13 Q. Right.

14 A. Not lose my job.

15 Q. When you came to New York, you had no backup plan.
16 You didn't make plans to have any other place to go if
17 the job didn't work out; right?

18 A. Yes, that's correct.

19 Q. And you did have a round trip ticket to fly back to
20 Hungary; right?

21 A. Yes.

22 Q. And it was a one-month ticket; right?

23 A. Yes.

24 Q. And it would have been possible to advance the return
25 date; correct?

Ms. Herczeg - Cross - Ms. Cesare

- 1 A. I am not sure.
- 2 Q. Did you ever try to advance the return date?
- 3 A. No.
- 4 Q. Did you ever investigate advancing the return date?
- 5 A. No.
- 6 Q. You had when you -- when you were in Joseph Yannai's
- 7 home, you had your passport with your private belongings;
- 8 right?
- 9 A. Yes.
- 10 Q. He didn't take any of your travel documents from you.
- 11 A. No.
- 12 Q. And you had your ticket in your private belongings;
- 13 right?
- 14 A. Yes.
- 15 Q. Now you said also that around the second week that
- 16 you were in Joseph Yannai's house, he would regularly
- 17 stand behind you and touched your -- touch your breasts
- 18 while you were at your work station; right?
- 19 A. That's correct.
- 20 Q. And he would do that when he was passing behind you;
- 21 correct?
- 22 A. Yes.
- 23 Q. And you never said anything -- you never said to him,
- 24 "Stop, don't do that."
- 25 A. No, because I was afraid of the consequences.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. Right. So you -- you just -- you let it happen;
2 right?

3 A. Yes.

4 Q. And you were afraid that you would have to leave his
5 house --

6 A. No.

7 Q. -- if you protested?

8 A. I was afraid to leave his house or he would hurt me
9 if I would refuse it.

10 Q. He never said to you that he would hurt you if you
11 refused the fondling; right?

12 A. No.

13 Q. And you never said to him, "Joseph, don't touch me
14 that way." Right?

15 A. I told him that I didn't want to be the part of this.

16 Q. You told him that after the incident when he
17 ejaculated on your breasts; right?

18 A. Yes.

19 Q. And the fondling began before that; correct?

20 A. Yes.

21 Q. Now the second week you were there, you started --
22 was when you started to on a regular basis prepare
23 Joseph's bath; is that right?

24 A. Yes.

25 Q. And that would involve running the bath, filling up

Ms. Herczeg - Cross - Ms. Cesare

- 1 -- and filling the tub up with water; right?
- 2 A. Yes.
- 3 Q. And you always made a bubble bath for him.
- 4 A. Yes.
- 5 Q. And you would bring his coffee, cigarettes, newspaper
- 6 and a telephone to him in the bathroom; right?
- 7 A. Yes.
- 8 Q. And while he was in the bathroom, you would sit
- 9 beside him?
- 10 A. He wanted me; yes.
- 11 Q. And you agreed to do that; right?
- 12 A. Yes.
- 13 Q. You walked into the bathroom of your own free will;
- 14 right?
- 15 A. I never did anything on my own will in his house.
- 16 Q. The only other person in the house was the other
- 17 woman named Gisele; right?
- 18 A. That's correct.
- 19 Q. And Gisele was also preparing his bath on a regular
- 20 basis; right?
- 21 A. Yes.
- 22 Q. And sometimes she'd sit -- the two of you would sit
- 23 in the bathroom with Joseph; right?
- 24 A. Yes.
- 25 Q. And during bath time, sometimes you'd wash his hair?

Ms. Herczeg - Cross - Ms. Cesare

- 1 A. No.
- 2 Q. Did you ever wash his hair?
- 3 A. No.
- 4 Q. Did you wash his body?
- 5 A. No. Uhm, well once he -- he grabbed my hand and he
- 6 wanted me to soap him.
- 7 Q. His private parts?
- 8 A. Yes.
- 9 Q. And you said you didn't want to do that; right?
- 10 A. Yes.
- 11 Q. And let go; correct?
- 12 A. (No verbal response.)
- 13 THE COURT: You have to speak. You can't shake
- 14 your head.
- 15 A. Yes.
- 16 Q. Okay. And Joseph never forced you to touch him when
- 17 he was in the bathroom; correct?
- 18 A. If someone would grab my hand, I would consider it.
- 19 Q. Okay. But when you pulled it back, he let go; right?
- 20 A. Yes, because he said that I was in the beginning of
- 21 my learning process.
- 22 Q. Uh-huh. He said eventually you'd change.
- 23 A. So later on --
- 24 Q. Did he say that eventually you'd change your mind and
- 25 be willing to do that for him?

Ms. Herczeg - Cross - Ms. Cesare

1 A. Yes.

2 Q. And he'd -- and there was a reason why he wasn't --
3 there was a reason you believed he wasn't giving you
4 pressure at that moment to touch him; right?

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. And what was the reason?

9 A. Only thing what was going on in my mind, that it was
10 the part of my job and if I would -- if I wouldn't do it,
11 then he would kick me out.

12 Q. But you didn't do it; right? You didn't touch his
13 penis when he wanted you to; right?

14 A. Because he said that it's okay for now.

15 Q. All right.

16 A. And then later on --

17 Q. And he -- you know, it was -- he clearly indicated to
18 you that he wanted you to perform oral sex occasionally
19 in that bathroom; right?

20 A. Yes.

21 Q. And you never did it; right?

22 A. No.

23 Q. And he never forced you to do it; right?

24 A. Yes, he did.

25 Q. Well, you never -- you never actually performed oral

Ms. Herczeg - Cross - Ms. Cesare

1 sex on him; isn't that correct?

2 A. That's correct.

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Ms. Herczeg - Cross - Ms. Cesare

1 Q. And there was a reason you believe that he didn't
2 force you to do it; right?

3 A. I didn't believe --

4 MS. STONE: Your Honor, I'm going to object.

5 Q. Isn't the reason --

6 THE COURT: On what ground?

7 MS. STONE: Asked and answered.

8 THE COURT: Yes, sustained.

9 Q. Isn't the reason that Joseph didn't force you to have
10 oral sex because Gisele was regularly performing oral sex
11 for him in the bathroom.

12 MS. STONE: Objection, your Honor.

13 THE COURT: Sustained.

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Ms. Herczeg - Cross - Ms. Cesare

1 Q. Were you ever in the bathroom with Gisele and Joseph
2 when Gisele performed oral sex on Joseph?

3 A. Yes.
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Ms. Herczeg - Cross - Ms. Cesare

1 Q. And when she performed oral sex on Joseph, did she do
2 so willingly, as far as you could tell?

3 MS. STONE: Objection.

4 THE COURT: Sustained.

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Ms. Herczeg - Cross - Ms. Cesare

1 Q. Did you observe Joseph force her to perform oral sex?

2 MS. STONE: Objection.

3 THE COURT: Overruled.

4 A. No.

5 Q. Did you ever see Gisele initiate sexual contact with
6 Joseph in the bathroom?

7 A. (No verbal response.)

8 Q. Did you ever see Gisele start --

9 THE COURT: You have to answer -- you have to
10 speak into the microphone. You can't just --

11 THE WITNESS: Sure.

12 Q. Do you understand the word initiate?

13 A. No.

14 Q. Did you ever see Gisele make the first gesture
15 towards sexual contact with Joseph?

16 A. I didn't observe this.

17 Q. You did ever see her put her hand into the tub with
18 him?

19 A. Yes.

20 Q. Did you ever see her touching his penis?

21 A. Yes.

22 Q. Did you ever see her move towards him, so that she
23 could perform oral sex on him?

24 A. Yes.

25 Q. And on those occasions when Gisele performed oral sex

Ms. Herczeg - Cross - Ms. Cesare

1 on Joseph, you remained sitting in the bathroom; isn't
2 that right?

3 A. At this moment, we were not sitting.

4 Q. You're standing in the bathroom?

5 A. Joseph would stand. Myself would stand. And Gisele
6 would --

7 Q. Be on her knees?

8 A. Yes.

9 Q. Okay. And you remained in the bathroom while that
10 occurred; right?

11 A. Yes.

12 Q. Nobody else was in the house at the time; correct?

13 A. No.

14 Q. You could have walked out of that bathroom.

15 A. I could have.

16 Q. Nobody forced you to stay in there.

17 A. No.

18 Q. Okay. Thank you. And instead you stayed and
19 observed what was happening.

20 A. Yes.

21 Q. I'm going to show you for identification what we've
22 marked as Defendant's Exhibit P-3. Do you recognize
23 that?

24 A. This is the bathroom.

25 Q. Is this the bathroom where Joseph usually had his

Ms. Herczeg - Cross - Ms. Cesare

1 morning bath?

2 A. That's correct.

3 MS. CESARE: I move into evidence P-3.

4 MS. STONE: No objection.

5 MS. CESARE: May we publish to the jury?

6 THE COURT: Yes.

7 (Defendant's Exhibit P-3 marked in evidence.)

8 Q. So is this what the bathroom looked like when you
9 were living in the Yannai residence?

10 A. Yes.

11 Q. Now on direct yesterday, you described an incident
12 where you said Joseph tried to push you down onto your
13 knees.

14 A. Yes.

15 Q. So -- because he wanted you to perform oral sex;
16 right?

17 A. Yes.

18 Q. Now, you've talked about what happened in Joseph
19 Yannai's house on many occasions to law enforcement
20 officers; correct?

21 A. Yes.

22 Q. And you said on direct that the first few times you
23 talked to the law enforcement officers you didn't tell
24 them the whole story; correct?

25 A. That's correct.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. And you said that's because you were afraid of the
2 police.

3 A. The first night; yes.

4 Q. So the first -- the night you left Joseph's house,
5 you felt afraid of the police?

6 A. No, I felt afraid of him.

7 Q. Of Joseph; okay. When you spoke to the police, were
8 you honest with them?

9 A. I was --

10 MS. STONE: Your Honor, I'm going to object to
11 the time frame.

12 Q. I'm talking about March 11, 2009. Were you honest
13 when you talked to the police?

14 A. I didn't tell the whole truth.

15 Q. You didn't tell them the whole truth. You left out
16 details; right?

17 A. Yes. Yes.

18 Q. Did you lie to them about anything?

19 A. Yes.

20 Q. On March 13, you met with Investigator Neil Merritt;
21 correct?

22 A. I'm not sure about the date but, yes.

23 Q. Just a few days after you left the Yannai residence;
24 right?

25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. And when you met with him, you were not so
2 frightened; correct?

3 A. Not really.

4 Q. Because --

5 A. I was --

6 Q. -- you met with him at the police station.

7 MS. STONE: Your Honor, I'd ask that the
8 witness be allowed to continue her answer.

9 THE COURT: Did you finish your answer?

10 A. I met her -- I met him at the -- at a police station,
11 I believe.

12 Q. And when you went to the police station, you brought
13 a letter that you had written about your experiences in
14 the Yannai home; correct?

15 A. Yes.

16 Q. And you had signed and dated that letter; correct?

17 A. Yes.

18 Q. And were there any false statements in the letter you
19 gave to Investigator Merritt?

20 A. I don't think so.

21 Q. And then after you gave him the letter, you sat down
22 and you talked to him about what happened in the Yannai
23 residence; correct?

24 A. Yes.

25 Q. And he took notes while you talked to him?

Ms. Herczeg - Cross - Ms. Cesare

1 A. Yes.

2 Q. And isn't it a fact that in your letter dated March
3 13, 2009, you never mentioned Joseph forcing you down to
4 your knees; isn't that correct?

5 A. There was a reason for that.

6 Q. Well what's the answer? Did you mention that Joseph
7 forced you to your knees in that letter?

8 A. My friend was helping me with the letter since my
9 English wasn't good. And I just felt ashamed, again, in
10 front of her.

11 Q. But in the --

12 A. But I didn't want to tell her.

13 Q. You told her that he wanted you to have oral sex in
14 the bathroom; right?

15 A. To who, I am sorry?

16 Q. In your letter, you write -- in your letter, dated
17 March 13, 2009, you write about the fact that Joseph
18 wanted you to have oral sex in the bathroom; is that
19 correct?

20 A. I don't remember.

21 Q. I'm going to -- would looking at something refresh
22 your recollection of what you wrote about --

23 A. I believe so.

24 Q. -- oral sex in the bathroom? For the witness, only,
25 I am going to show you something. Just, you know, don't

Ms. Herczeg - Cross - Ms. Cesare

1 read it out loud and I want to direct your attention --
2 just take a look at it. Does this document help you
3 refresh your recollection?

4 A. Yes.

5 Q. Okay. And so now that your memory is refreshed,
6 isn't it correct that you wrote about the fact that
7 Joseph wanted you to have oral sex in the bathroom in
8 your letter dated March 13.

9 A. Yes.

10 Q. Yes. So you talked to your friend about oral sex in
11 the bathroom; right?

12 A. Yes.

13 Q. So -- I understand you are ashamed about what
14 happened in the Yannai house; right?

15 A. Yes.

16 Q. But you were able to talk to your friend about it.

17 A. Not everything.

18 Q. Because you wrote that -- because you wrote about
19 that in the letter that she helped type for you; right?

20 A. Yes.

21 Q. And in that letter there's no mention of being forced
22 to your knees in the bathroom; isn't that correct?

23 A. No.

24 Q. Those details are not in the letter; is that right?

25 A. That's correct.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. All right. What you wrote instead was "After he
2 wanted me to have oral sex, I refused that every time and
3 he didn't force me." That's what you put in the letter;
4 right?

5 A. Yes.

6 Q. After you walked into Investigator Merritt's office,
7 you talked to him -- now I am talking about March 13,
8 2009, you walked into Investigator Merritt's office;
9 right? Is that right?

10 A. Yes.

11 Q. And you talked to him about what happened in the
12 Yannai residence.

13 A. Yes.

14 Q. And you gave him this letter; right?

15 A. Yes.

16 Q. And it's also fair to say that you never told
17 Investigator Merritt about being forced to your knees in
18 the bathroom in Joseph Yannai's house; isn't that right?

19 A. It was uncomfortable to talk about it with him.

20 Q. So it's correct, you didn't tell him about that.

21 A. That's correct.

22 Q. You told him that -- you did discuss the issue of
23 oral sex in the bathroom though; right?

24 A. Yes.

25 Q. And you told him that Joseph wanted you to do it;

Ms. Herczeg - Cross - Ms. Cesare

1 right?

2 A. Yes.

3 Q. And you told Investigator Merritt that you refused it
4 every time; right?

5 A. Yes.

6 Q. And you told Investigator Merritt that Joseph Yannai
7 never forced you to have oral sex in the bathroom; right?

8 A. I said it because --

9 Q. Well, did you -- is that correct? Is that an
10 accurate statement?

11 A. Yes.

12 Q. You never told him -- you told him that Joseph never
13 forced you; right?

14 A. Yes.

15 Q. And that is correct; right?

16 A. Yes.

17 Q. But you didn't tell him about being pushed down to
18 your knees.

19 A. No.

20 Q. And the second week, you were in Joseph's home,
21 Joseph started to ask you to wake him up after his daily
22 nap; is that right?

23 A. It was Gisele.

24 Q. Gisele asked you to wake him up?

25 A. I was ready for the daily routine; yeah.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. Okay. And was Gisele inviting you to join her when
2 she woke up Joseph after his nap?

3 A. Yes.

4 Q. And you agreed to do that.

5 A. Yes.

6 Q. Okay. And at first you would go into his bedroom and
7 sit on his bed; right?

8 A. Yes.

9 Q. And then you agreed to lie down in bed with them.

10 A. Yes.

11 Q. And then sometimes you got under the blankets with
12 the two of them.

13 A. Yes.

14 Q. And when all three of you were in bed, Joseph would
15 be in the middle; right?

16 A. Yes.

17 Q. There were times when Joseph took off your shirt or
18 unbuttoned your shirt?

19 A. Yes.

20 Q. Were there times when you unbuttoned it yourself?

21 A. Yes.

22 Q. And when Joseph unbuttoned your shirt, you didn't --
23 you agreed.

24 A. Yes.

25 Q. You didn't -- you never said no. You let him do it.

Ms. Herczeg - Cross - Ms. Cesare

- 1 A. In the beginning, I did not.
- 2 Q. Okay.
- 3 A. I didn't want to.
- 4 Q. And in the beginning, you didn't take off your shirt;
- 5 right?
- 6 A. No.
- 7 Q. But eventually, you let it happen.
- 8 A. Yes.
- 9 Q. Okay. And when you were in bed with Joseph and
- 10 Gisele, you observed the two of them engaged in sexual
- 11 contact; right?
- 12 A. Yes.
- 13 Q. And it was more than just hugging and kissing;
- 14 correct?
- 15 A. Yes.
- 16 Q. It involved oral sex.
- 17 A. Yes.
- 18 Q. Kissing intimate parts of their bodies.
- 19 A. I believe so.
- 20 Q. And you would lie in bed with them and observe what
- 21 they were doing.
- 22 A. Yes.
- 23 Q. And sometimes you'd lie in bed with your own shirt
- 24 off; right?
- 25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

- 1 Q. On direct you talked about one time how Joseph wanted
2 you to manually -- to touch his penis; right?
- 3 A. Yes.
- 4 Q. And you were uncomfortable with that; right?
- 5 A. Yes.
- 6 Q. You were uncomfortable about all of this; right?
- 7 A. Yes.
- 8 Q. It's uncomfortable to talk about it right now; right?
- 9 A. Yes.
- 10 Q. But on that one occasion when he asked you to touch
11 him, you did. You agreed to do that; isn't that correct?
- 12 A. He grabbed my hand.
- 13 Q. Okay. And you --
- 14 A. And put it on his penis.
- 15 Q. -- did --
- 16 A. Yes.
- 17 Q. He took your hand and put it on his penis; right?
- 18 A. Yes.
- 19 Q. And then you manipulated his penis in some way;
20 correct?
- 21 A. Yes.
- 22 Q. But you were uncomfortable doing it, so you didn't
23 continue touching him as long as he wanted you to touch
24 him; right?
- 25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. And when you stopped touching him, he got upset;
2 correct?

3 A. Yes.

4 Q. And he said something like, "Why did you stop?"

5 A. Yes.

6 Q. Yesterday on direct you said that on one occasion, I
7 believe, Joseph kissed your breasts and bit your breasts
8 while he was kissing you; right?

9 A. That's correct.

10 Q. And it was painful.

11 A. Yes.

12 Q. And it made you uncomfortable; right?

13 A. Yes.

14 Q. Now this -- you didn't tell Investigator Merritt
15 about this biting when you spoke to him in his office on
16 March 13, 2009; did you?

17 A. No.

18 Q. And a few days later, you had another meeting with
19 Investigator Merritt and Prosecutor Audrey Stone in her
20 office; right?

21 A. Yes.

22 Q. You met Prosecutor Audrey Stone very shortly after
23 you left the Yannai residence; isn't that correct?

24 A. Yes.

25 Q. And isn't it a fact -- and when you met with Audrey

Ms. Herczeg - Cross - Ms. Cesare

1 Stone and Investigator Merritt, the investigator was
2 keeping notes of the conversation; correct ?

3 A. Yes.

4 Q. And isn't it a fact that when you met with Prosecutor
5 Audrey Stone in her office with Investigator Merritt, you
6 didn't tell her that you had been bitten on your breasts.

7 A. No.

8 Q. And you didn't put anything about biting in the
9 letter you wrote on March 13 either.

10 A. I couldn't remember everything.

11 Q. Okay.

12 A. On direct you said that one time while you were in
13 bed with Joseph and Gisele he slapped you; is that right?

14 A. Yes.

15 Q. That's another detail you did not tell
16 Prosecutor Stone about when you met with her on March 16,
17 2009; right?

18 A. As I said, I couldn't remember everything.

19 Q. Okay. And that meeting was a few days after you left
20 Joseph Yannai's residence; correct?

21 A. I'm not sure.

22 Q. It was soon after you left his house, a matter of
23 days or a week; right?

24 A. Yes.

25 Q. Now Joseph Yannai's wife is named Elena; right?

Ms. Herczeg - Cross - Ms. Cesare

1 A. Yes.

2 Q. And Elena was home on the weekends.

3 A. Yes.

4 Q. And Elena came home on weekdays after her job was
5 finished; right?

6 A. I believe so.

7 Q. And the four of you would have your dinner meal
8 together; right?

9 A. Yes.

10 Q. And after supper, you would help clean up the kitchen
11 together?

12 A. Yes.

13 Q. And then after that, sometimes you'd relax and watch
14 TV in the family room?

15 A. Yes.

16 Q. And would Elena join you and watch television with
17 you?

18 A. No, I don't remember.

19 Q. Okay.

20 A. I -- no.

21 Q. Okay. Did you ever tell Elena what was going on when
22 she was at work?

23 A. No.

24 Q. The worst thing that happened to you in Joseph
25 Yannai's house was that day when he ejaculated on your

Ms. Herczeg - Cross - Ms. Cesare

1 breasts; right?

2 A. Yeah.

3 Q. And on that day, Gisele had asked you if you wanted
4 to go wake him up; right?

5 A. I don't remember if she asked or not.

6 Q. The two of you went into his room together; right?

7 A. Yes.

8 Q. And you stayed in bed with him for about an hour.

9 A. Maybe.

10 Q. Isn't that what you told the investigator --

11 A. Usually; yes.

12 Q. -- when you talked to him?

13 A. Usually, that's how long it lasted.

14 Q. You usually spent about an hour in the bedroom
15 together?

16 A. Yes.

17 Q. Okay. And on this particular day, like the other
18 times you were in bed, Gisele and Joseph were engaged in
19 sexual relations; right?

20 A. That's correct.

21 Q. You were lying next to them observing this happening.

22 A. Yes.

23 Q. And Joseph had taken -- unbuttoned your shirt; right?

24 A. Yes.

25 THE COURT: Didn't we go over this already?

Ms. Herczeg - Cross - Ms. Cesare

1 MS. CESARE: I'm talking about what
2 specifically happened on a specific date, all right.

3 Q. And then Gisele gave Joseph a -- performed oral sex
4 on Joseph; right?

5 A. I don't remember.

6 Q. You talked about this when you spoke to Investigator
7 Merritt on March 13, 2009; didn't you?

8 A. It was every day. It wasn't on the particular date.

9 Q. But do you have a clear recollection of what happened
10 on the day he ejaculated on you?

11 A. No.

12 Q. Okay. But it would be fair to say on that particular
13 date, it was Gisele who performed the sexual act that
14 brought him to have an orgasm; right?

15 A. No.

16 Q. Isn't that what you told Investigator Merritt?

17 A. No, I said she was helping in some way. That's what
18 I told him.

19 Q. And right before Joseph achieved orgasm, he climbed
20 on top of you and ejaculated on your breasts; right?

21 A. Yes.

22 Q. And you got upset after that happened; right?

23 A. Yes.

24 Q. And he said to you "It's okay, take it easy;" right?

25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

- 1 Q. And then you got up and left the room.
- 2 A. Yes.
- 3 Q. And after that happened, you said to Joseph, "I can't
- 4 take this anymore. I don't want to do this at all;"
- 5 right?
- 6 A. I believe so.
- 7 Q. You said, "That's the end. I'm not doing any of this
- 8 anymore;" right?
- 9 A. Yes.
- 10 Q. And he said, "Okay." Right? He accepted that
- 11 decision.
- 12 A. Yes.
- 13 Q. And he said to you something like "Well, I'm going to
- 14 treat you like an it instead of a she;" right?
- 15 A. That's correct.
- 16 Q. He would -- and he would treat you like a piece of
- 17 furniture instead of a person.
- 18 A. Yes.
- 19 Q. And he indicated to you that he would not be
- 20 affectionate towards you in any way.
- 21 A. What do you mean?
- 22 Q. He wouldn't treat you with any affection or attention
- 23 or kindness if you didn't want to have sex with him;
- 24 right?
- 25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. And after you made this decision, Joseph stops making
2 passes at you; right?

3 A. He stopped treating me as a human being; yes.

4 Q. Right. So after that, he didn't grope your breasts
5 anymore.

6 A. No.

7 Q. He didn't ask you to stop wearing your bra.

8 A. No.

9 Q. Did you -- did you start wearing your bra again after
10 that?

11 A. I believe so.

12 Q. And he didn't call you to come wake him up in the
13 bedroom.

14 A. That's correct.

15 Q. So when you told him you didn't want to do it, he
16 accepted your decision; right?

17 A. Yes.

18 Q. Now after you made this decision, Joseph and Gisele
19 stopped being friendly with you; correct?

20 A. Yes.

21 Q. They just kind of stopped talking to you.

22 A. Yes.

23 Q. And you know, you just continued to do the church
24 research on the computer; right?

25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

- 1 Q. You continued to have your meals with them; right?
- 2 A. Yes.
- 3 Q. But there was no more friendly conversation with
- 4 them.
- 5 A. No.
- 6 Q. And that's when you decided to get in touch with your
- 7 Hungarian friend who lived in Pound Ridge; right?
- 8 A. That's correct.
- 9 Q. So you e-mailed her and you made a plan to meet her.
- 10 A. Yes.
- 11 Q. And you asked her to bring you a converter, so you
- 12 could charge up your cell phone; right?
- 13 A. Yes.
- 14 Q. And she did.
- 15 A. I think she -- yeah, I think she did.
- 16 Q. Right. Because you were able to -- after you met
- 17 your friend, Csilla --
- 18 A. Yes.
- 19 Q. -- you were able to charge up and use your cell
- 20 phone; right?
- 21 A. Yes.
- 22 Q. Because after that, you were able to text her to
- 23 communicate with her; correct?
- 24 A. Yes.
- 25 Q. So -- and then you texted her and made a plan to meet

Ms. Herczeg - Cross - Ms. Cesare

1 her another day; correct?

2 A. Yes.

3 Q. I am going to show you what's in evidence as Exhibit
4 P-38. Do you recognize the people in this picture?

5 A. Yes.

6 Q. And is that -- are the people in this picture Gisele
7 and Joseph Yannai?

8 A. Yes.

9 MS. STONE: Your Honor, I'm going to object to
10 the relevance of this. It's not even a time when this
11 witness was in the country.

12 THE COURT: This picture has been shown a
13 hundred times or something similar to it. Overruled.

14 Q. Do you remember what Joseph's house looked like?

15 A. Yes.

16 Q. While you were there, did you ever walk down to the
17 pond and look around the property?

18 A. Maybe once.

19 Q. Okay.

20 A. Or twice.

21 Q. I am going to show you for identification purposes,
22 Defendant's Exhibit P-4. Do you recognize that?

23 A. Yes.

24 Q. And that's a picture of the back of the Yannai
25 residence?

Ms. Herczeg - Cross - Ms. Cesare

1 A. Yes.

2 MS. CESARE: And I move P-4 into evidence.

3 MS. STONE: No objection.

4 (Defendant's Exhibit P-4 marked in evidence.)

5 MS. CESARE: May we publish?

6 THE COURT: I am tempted to object myself
7 because I don't see the relevance of this but go ahead.
8 It's admitted. Go show it to the jury.

9 MS. CESARE: Thank you.

10 Q. Joseph never forced you to go into the bathroom with
11 him; right?

12 A. No.

13 Q. He never forced you to walk into his bedroom;
14 correct?

15 A. No.

16 Q. Is it correct that he never forced you to come into
17 his bedroom?

18 MS. STONE: Your Honor, I believe this has been
19 asked and answered.

20 MS. CESARE: Let me, I'm just trying to
21 rephrase the --

22 THE COURT: Go ahead. Rephrase it.

23 Q. Did Joseph ever force you to have intercourse with
24 him?

25 A. What does that mean?

Ms. Herczeg - Cross - Ms. Cesare

1 Q. That's penis-vagina penetration. Did Joseph ever
2 force you to have sexual intercourse with him?

3 A. Yes.

4 Q. Yes?

5 A. Yes.

6 Q. Did you ever have an occasion where Joseph put his
7 penis inside of you?

8 A. Oh, no, no. I'm sorry. No.

9 Q. All right. And he never forced you to do that;
10 right?

11 A. No.

12 Q. He never forcibly touched your vagina; right?

13 A. Mine?

14 Q. Right.

15 A. I'm sorry, that -- I don't understand the question.

16 Q. He never forcibly touched your vagina.

17 A. Myself?

18 Q. Yes.

19 A. No.

20 Q. Now you had a -- when you left Joseph Yannai's
21 residence on March 11, 2009, you still had a valid return
22 ticket back to Hungary; correct?

23 A. That's correct.

24

25

Ms. Herczeg - Cross - Ms. Cesare

1 Q. And that ticket had a return flight of March 17,
2 2009; correct?

3 A. Yes.

4 MS. STONE: Your Honor, this is asked and
5 answered yesterday afternoon.

6 THE COURT: Sustained, unless -- I mean I don't
7 remember exactly but I believe it was. Was it asked and
8 answered yesterday?

9 MS. CESARE: It was but I am moving on to a new
10 topic. I'm setting up the topic.

11 THE COURT: You don't have to go over old
12 topics.

13 MS. CESARE: All right.

14 Q. Before your ticket expired, you had a meeting with
15 Prosecutor Audrey Stone in her office; correct?

16 MS. STONE: Your Honor, this was asked and
17 answered, this very same line of questioning.

18 THE COURT: Was it asked and answered?

19 MS. CESARE: I did ask that question yesterday.

20 THE COURT: So why are we going over it?
21
22
23
24
25

Ms. Herczeg - Cross - Ms. Cesare

1 Q. So while you were in Audrey Stone's office, she told
2 you that she could help you get housing.

3 MS. STONE: Your Honor, objection.

4 A. No. No.

5 Q. She told you she could help you get a visa to stay in
6 the United States; right?

7 A. No.

8 MS. STONE: Your Honor, objection.

9 Q. In May of 2009, you had a meeting in Audrey Stone's
10 office with two officials from the United States
11 Immigration Service; didn't you?

12 A. I can't remember.

13 Q. Do you remember having a meeting in her office with
14 some other people where you talked about getting a visa
15 to stay in the United States?

16 A. No.

17 Q. Never?

18 A. I don't remember it.

19 Q. In June of 2009, you had a lawyer who helped you file
20 an application for a visa to remain in the United States.

21 A. I don't remember the date but that's correct.

22 Q. You had a lawyer; right?

23 A. Yes.

24 Q. How did you get that lawyer?

25 A. I have no idea.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. You didn't hire the lawyer yourself; did you?

2 A. I did not.

3 Q. Did somebody help you get that lawyer?

4 A. I believe so.

5 Q. Who?

6 A. I don't know.

7 Q. You have no idea who helped you get that lawyer?

8 A. I believe that was the organization.

9 Q. And who introduced you to the organization?

10 A. I think that was Audrey Stone.

11 Q. And then after that you had a meeting with a person
12 with Audrey Stone, a person from the organization, your
13 lawyer and some people from the immigration service;
14 right?

15 MS. STONE: Your Honor, I'm going to object.

16 THE COURT: On what ground?

17 MS. STONE: There was -- I don't even know what
18 is being referred to.

19 THE COURT: Well that is not a basis for an
20 objection.

21 Q. Do you remember that meeting?

22 THE COURT: Do you want to repeat the question?

23 Q. You had a meeting with Audrey Stone, your attorney, a
24 person from the organization, and two members from the
25 United States Immigration Service; correct?

Ms. Herczeg - Cross - Ms. Cesare

1 A. I can't remember if everyone was in the room at the
2 same time.

3 Q. Okay. But you do remember meeting with some people
4 from immigration; correct?

5 A. I met hundreds of people during this -- since the
6 whole thing started.

7 Q. Right. And you had most of those meetings in Audrey
8 Stone's office or the office building where she works;
9 right? Yes or no?

10 A. Yes.

11 Q. One June 5, 2009, you filled out an application for a
12 visa to stay in the United States; correct?

13 A. That what it --

14 Q. Does that date sound --

15 A. Yes.

16 Q. -- right?

17 A. I'm not sure.

18 Q. But was it a -- is it fair to say it was
19 approximately June of 2009?

20 A. I can't remember.

21 Q. All right. Well, I am going to show you something,
22 let me see if it will refresh your recollection. Just
23 for the witness, please. Just take -- can you see what's
24 on the screen?

25 A. Yes.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. Just take a look at it. Don't read it out loud.

2 A. Yes.

3 Q. Does this help you remember when you applied for your
4 visa?

5 A. Yes.

6 Q. And that was approximately June 4, 2009?

7 A. It was.

8 Q. When you applied for your visa, you made the
9 statement that you'd been the victim of a severe form of
10 human trafficking; isn't that correct?

11 A. Yes.

12 Q. You also made the statement that once you began
13 working for Joseph Yannai, you became totally dependent
14 on him and he never paid you. Did you make that
15 statement?

16 A. Yes.

17 Q. But you agreed to work for him in exchange of room,
18 board and expenses; correct?

19 A. Yes.

20 Q. You knew you weren't going to be paid a salary;
21 right?

22 A. Yes.

23 Q. That was the deal. You understood it; right?

24 A. Yes.

25 Q. But when you filed your petition to get a visa with

Ms. Herczeg - Cross - Ms. Cesare

1 the United States Immigration Service, you complained
2 that he had never paid you.

3 A. Yes.

4 Q. And you didn't -- and you file dan affidavit to that
5 effect; correct?

6 A. A what? I'm sorry.

7 Q. You swore out a written statement with that -- to
8 that effect; correct?

9 A. Yes.

10 Q. And you never anywhere in that statement said that
11 you had agreed to come in exchange for room, board and
12 expenses only.

13 A. No.

14 Q. So you didn't tell the whole truth when you filled
15 out that application; correct?

16 A. I think it wasn't about the deal, the reason why I
17 came here or how I came here.

18 Q. In your affidavit in support of your visa
19 application, you never clearly stated that you agreed to
20 come here in exchange for room, board and expenses; isn't
21 that correct?

22 A. Yes.

23 Q. You also made a statement in your application for a
24 visa application -- for a visa, that you had never
25 committed a crime for which you had not been arrested;

Ms. Herczeg - Cross - Ms. Cesare

1 isn't that correct?

2 A. Yes.

3 Q. But in fact, you had committed a crime for which you
4 had not been arrested; right?

5 A. I don't think so.

6 Q. Well on direct yesterday --

7 A. Oh.

8 Q. -- you agreed that you knew it was a crime to lie to
9 immigration --

10 A. Yeah.

11 Q. -- when you falsely claimed that you were a tourist
12 instead of coming for a job; right?

13 A. Yes, that's correct.

14 Q. And you filled out this visa application many months
15 after you left Joseph Yannai's residence; right?

16 A. Yes.

17 Q. And in this application, you falsely stated that you
18 had never committed a crime for which you had not been
19 arrested; correct?

20 A. No, it wasn't on a statement.

21 Q. I'm going to -- you made this -- did you or did you
22 not answer no to the following question on the visa
23 application:

24 "Have you ever committed a crime or offense for which
25 you have not been arrested?"

Ms. Herczeg - Cross - Ms. Cesare

1 A. I can't remember.

2 Q. All right. Well, I am going to show you something
3 and see if this refreshes your recollection, please.

4 A. Uhm.

5 Q. Does that refresh your recollection?

6 A. Yes.

7 Q. Do you now have a memory of how you filled out the
8 visa application?

9 THE COURT: Not how she filled it out what she
10 wrote on that particular question.

11 A. The answer is no.

12 Q. You have no recollection? Well --

13 A. The answer on the sheet is no.

14 Q. Okay. You said -- and that was a false statement;
15 right?

16 A. The -- yes.

17 Q. You were granted a T visa on January 22, 2010;
18 correct?

19 A. Yes.

20 Q. And you were granted this visa based upon what you
21 said happened in Joseph Yannai's house; right?

22 A. I believe so.

23 Q. And this visa gives you permission to live and work
24 in the United States for four years.

25 A. I really don't know what's the visa for.

Ms. Herczeg - Cross - Ms. Cesare

1 Q. Well when you got the visa, it advised you it was
2 valid from -- actually, the visa indicated -- you
3 received notice of the award of the visa on January 22,
4 2010; does that sound right?

5 A. I can't remember.

6 Q. I will show you something. See if this refreshes
7 your recollection, please. Was the notice date of the
8 visa January 22, 2010?

9 A. Yes.

10 Q. Right. And the visa was valid from November 30, 2009
11 to November 29, 2013; correct?

12 A. Yes.

13 Q. So you got a four year visa; right?

14 A. Yes.

15 Q. And so now you are free to live in the United States
16 and work in the United States legally; correct?

17 A. Yes.

18 Q. And you also can apply with this visa, you now --
19 you're permitted to apply for legal permanent residency
20 status; correct?

21 A. I'm not sure.

22 Q. Did your immigration lawyer talk to you about that?

23 A. I never asked.

24 Q. The notice you got about the visa explained to you
25 that "Federal law provides that you may be eligible to

Ms. Herczeg - Redirect - Ms. Stone

1 become a legal permanent resident in the United States;"
2 right?

3 A. Yes.

4 Q. And that means that you could spend the rest of your
5 life living in the United States.

6 A. Could be a possibility.

7 Q. Right. So this visa has given you the opportunity to
8 live here in this country for the rest of your life.

9 THE COURT: She's asked and answered the
10 question.

11 Q. The notice you got with the visa also informed you
12 that not only can you live here for the rest of your
13 life, you can bring your family here to live with you;
14 right?

15 A. I didn't have any information about that. I didn't
16 have any clue.

17 Q. Now you've talked to the prosecutors about getting
18 money as a result of this trial; right?

19 A. Yes.

20 Q. And it's fair to say that you have an expectation
21 that you might win some money if Joseph Yannai is
22 convicted in this case?

23 A. No.

24 Q. You think that will have nothing -- do you have any
25 hope that you will receive a money award in this case;

Ms. Herczeg - Redirect - Ms. Stone

1 right?

2 A. No.

3 Q. In your June 4, 2009 affidavit in support of your
4 visa application, didn't you in fact say "I am interested
5 in asking for money damages from Joseph?"

6 A. My lawyer helped me with the application. He offered
7 me.

8 Q. So you signed a statement saying you were interested
9 in getting money damages from Joseph; right?

10 A. Yes.

11 Q. And your lawyer told you that when you sign an
12 affidavit, you have to be -- it must be -- you have to
13 swear to the truthfulness of what's in the statement;
14 right?

15 A. Yes.

16 Q. So the affidavit was, in fact, your true statement?

17 A. I agreed with him.

18 MS. CESARE: May I have a minute, please?

19 (Pause.)

20 MS. CESARE: No further questions.

21 REDIRECT EXAMINATION

22 BY MS. STONE:

23 Q. Bernadett, why are you here testifying in this trial?

24 MS. CESARE: Objection. Scope.

25 THE COURT: I'm sorry. I was talking to my

Ms. Herczeg - Redirect - Ms. Stone

1 courtroom deputy. Did anybody --

2 Q. Why are you here testifying?

3 THE COURT: You have an objection? Did you
4 voice an objection? I'm sorry. I don't want to suggest
5 that you should but I didn't --

6 MS. CESARE: I have an objection.

7 THE COURT: You do?

8 MS. CESARE: I do. It's scope.

9 THE COURT: Scope?

10 MR. SCHNEIDER: Beyond the scope.

11 THE COURT: Overruled.

12 Q. Why are you here testifying, Bernadett?

13 A. Because I wanted -- I want Mr. Yannai to stop doing
14 what he was doing with women.

15 MS. CESARE: Objection. Move to strike.

16 THE COURT: Overruled.

17 Q. Bernadett, at a certain point, did you meet with the
18 government and a lawyer and it was explained to you that
19 lying to immigration was a crime at the airport? Do
20 you --

21 A. No.

22 Q. Do you remember when you learned that lying to
23 immigration was a crime?

24 A. Like two weeks ago, three.

25 Q. And when you filled out the application for a visa,

Ms. Herczeg - Redirect - Ms. Stone

1 that was in June 2009; right? That was a year ago when
2 you filled out the affidavit for the visa?

3 A. Yes.

4 Q. And when you filled out the affidavit for the visa,
5 you were asked some questions about whether on the
6 affidavit you had explained that the payment would come
7 after a year. Do you remember writing on that
8 application that "The offer was \$20,000 after one year of
9 work and free housing and food at Joseph's house." Do
10 you remember writing that on your affidavit?

11 A. I can't remember.

12 Q. Let me just show you something and ask if this
13 refreshes your recollection. Just take a look at the
14 highlighted portion. Does that refresh your recollection
15 if you put that in your affidavit?

16 A. Yes.

17 Q. Now Bernadett, at a certain point you lived in a
18 domestic violent shelter.

19 A. That's correct.

20 Q. And did you feel any safer when you went to live in
21 the domestic violent shelter than you had when you were
22 living in Pound Ridge?

23 MS. CESARE: Objection.

24 THE COURT: Overruled.

25 A. Yes.

Ms. Herczeg - Redirect - Ms. Stone

1 Q. And while you were living in the shelter, did you
2 meet with counselors?

3 A. Yes.
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Ms. Herczeg - Redirect - Ms. Stone

1 Q. And after that, do you recall, you filled out a sworn
2 statement with Investigator Merritt about this case; do
3 you remember signing a statement?

4 MS. CESARE: Objection. May we approach?

5 (Conference held at side-bar.)

6 MS. CESARE: I think the government's about to
7 try and bring in a prior consistent statement of this
8 witness that was subsequent to the statements I cross-
9 examined her on. It's not admissible. It's hearsay.
10 There's no exception to the clause.

11 MS. STONE: Will you --

12 THE COURT: Do you mean if it was before, it
13 would be admissible but now --

14 MS. CESARE: Right.

15 THE COURT: -- because it's after --

16 MS. CESARE: If they're going to argue -- they
17 can argue recent fabrication under this sequence of
18 events.

19 THE COURT: I'm not sure I understand. First
20 tell me what it is that you were going to --

21 MS. STONE: It's a prior consistent statement.
22 There was a suggestion that --

23 THE COURT: No, when was it given?

24 MS. STONE: It was given in April 22, 2009. It
25 was her first affidavit that she ever wrote to the police.

Ms. Herczeg - Redirect - Ms. Stone

1 It's the first sworn affidavit in this case.

2 THE COURT: I mean what does it say?

3 MS. STONE: It's consistent with her testimony
4 concerning the forced oral sex, the biting, the
5 ejaculation.

6 MS. CESARE: But she -- my point when I was
7 confronting her was that she didn't give those details
8 when she talked to the police on March --

9 THE COURT: Wait a minute. Wait. We're going
10 to take a little recess, ladies and gentlemen.

11 (Jury exits the courtroom.)

12 MR. SPECTOR: Judge, should we have the witness
13 step down?

14 THE COURT: Yes.

15 (Witness exits the courtroom.)

16 MS. CESARE: Your Honor, my point when I was
17 confronting this witness and the point I want to make now
18 is that she changed her story after -- subsequent to
19 March 13 and March 16. And the government is bringing in
20 -- my point was that she left out important details about
21 what happened when she talked to the police close in time
22 to the incident.

23 Subsequently, she changed her story and the
24 government wants to bring in a subsequent statement that
25 is simply an out of court statement. It's a hearsay

Ms. Herczeg - Redirect - Ms. Stone

1 statement. The only basis they could use to bring it in
2 would be to suggest that I've accused this witness of a
3 recent fabrication but that's not the case.

4 This witness did not in a timely manner
5 describe the details of what happened to her to the
6 police officers in the case. And the fact that
7 subsequently she has changed her story does not give the
8 government a basis to introduce prior consistent
9 statements with her in court testimony.

10 THE COURT: Well, what about the doctrine of
11 rehabilitation? I mean it seems to me that you sort of
12 left the impression that she never said this in 2009 and
13 isn't it admissible essentially to rebut that suggestion?
14 I mean it was a month later. There were -- there were
15 arguably different circumstances.

16 I think that -- I mean my initial feeling is
17 that to the extent that there is an impression left in
18 2009 before this particular charge anyway was brought,
19 before the federal government got involved in the case,
20 you left an impression that she never said this. And I
21 don't know why the government is not entitled to rebut
22 that and just --

23

24 MS. CESARE: Judge, I didn't --

25 THE COURT: -- simply rehabilitate her. Now,

Ms. Herczeg - Redirect - Ms. Stone

1 I --

2 MS. CESARE: Judge, I --

3 THE COURT: Go ahead.

4 MS. CESARE: Frankly, I don't think that's a
5 fair interpretation of the questions and answers that I
6 elicited in the cross-examination. Whenever I asked her,
7 I was very specific about the dates involved. I
8 specifically identified statements she made on March 11,
9 2009, March 13, 2009 and March 16, 2009.

10 THE COURT: I understand that. So?

11 MS. CESARE: And I never suggested that
12 subsequent to that she left out details.

13 THE COURT: I understand that.

14 MS. CESARE: You know, of course --

15 THE COURT: But that's the point. It's roughly
16 contemporaneously. You know, you're talking about March
17 and she's talking about April. I mean it's roughly
18 contemporaneous. Of course you didn't suggest it. You
19 don't want the jury to know it. I'm not being critical
20 of you. It's simply -- it's a perfectly proper what you
21 did. I mean this is -- the question is whether or not an
22 erroneous impression has been left that she never said
23 this during this period when she was talking, I assume to
24 the --

25 MS. CESARE: No, the impression she never --

Ms. Herczeg - Redirect - Ms. Stone

1 THE COURT: -- to Ms. Stone in her capacity as
2 an assistant district attorney.

3 MS. CESARE: No, the impression that only --
4 the only conclusion the jury can draw is that she never
5 said this on March 11, March 13 and March 16. There is
6 no -- there was no cross-examination to suggest that she
7 never said that stuff on later dates. All right? I
8 don't think that's fair.

9 THE COURT: I understand that. That's the
10 whole point. That's the whole point. And that's what
11 you're going to argue to the jury and it's going to leave
12 that impression. In March, whatever dates you just --
13 she never said anything and the impression is going to be
14 left that she never said anything. And it seems to me
15 that the government is entitled to show that she did. I
16 mean, I am not suggesting that the hearsay rule doesn't
17 apply here necessarily but --

18 MS. CESARE: Judge?

19 THE COURT: -- that's what I call technical --

20 MR. SCHNEIDER: You can call it justice.

21 THE COURT: -- hearsay objections because --

22 MS. CESARE: Just as what -- Judge, I --

23 THE COURT: -- essentially, the two purposes of
24 the hearsay rule are one that you haven't had a chance to
25 contemporaneously cross-examine and the other -- it's the

Ms. Herczeg - Redirect - Ms. Stone

1 same as the confrontation clause essentially, in which
2 the fact that the hearsay declarant is available for
3 cross-examination doesn't implicate the confrontation
4 clause. And the other purpose underlying the hearsay
5 rule is, you know, there's some question as to whether
6 what the witness said has been accurately recorded. And
7 this is a -- is this a written -- contemporaneously
8 written statement? I forget now.

9 MS. STONE: Your Honor, this is the first
10 complete affidavit that the witness provided to --

11 THE COURT: Oh, so it's under oath, as well.
12 So we don't even have the question of it not being under
13 oath.

14 MS. CESARE: Your Honor, I --

15 THE COURT: So it's under oath. There's no
16 question about whether -- what the hearsay declarant said
17 was made. I don't -- that doesn't mean it would be --
18 that hearsay objection is necessarily technically not
19 correct. I am just pointing out that it's essentially a
20 -- it comes more technical when, you know none of any of
21 the purposes of the hearsay rule are truly implicated.
22 But just give me a minute.

23 MS. CESARE: Your Honor, may I?

24 THE COURT: Yes.

25 MS. CESARE: Though we persist in our

Ms. Herczeg - Redirect - Ms. Stone

1 objection, we certainly object to the -- we'd object to
2 the admission of her supporting deposition affidavit into
3 evidence. If the Court is going to permit any
4 questioning on this issue, we feel that the questioning
5 should be limited to questions and answers and we oppose
6 the admission of the April 22, 2009 affidavit.

7 THE COURT: Just give me a minute.

8 (Pause.)

9 THE COURT: I'm just going to take a short
10 recess.

11 MS. CESARE: I beg your pardon?

12 THE COURT: I said I'm just going to take a
13 short recess. Do you intend to offer this document?

14 MS. STONE: Yes, your Honor.

15 MS. CESARE: Yeah, I'd --

16 MR. SCHNEIDER: We'd be asking for redaction if
17 it goes in at all.

18 MS. CESARE: Does your Honor want to see a copy
19 of this affidavit they want to put in, that they're
20 talking about?

21 THE COURT: Not right now.

22 (Court recessed.)

23 THE COURT: Okay. So where are we? I mean, I
24 just want to be sure. You're not -- you're saying you're
25 not making a claim of recent fabrication.

Ms. Herczeg - Redirect - Ms. Stone

1 MS. CESARE: That's correct.

2 THE COURT: And why is that not? Why not? I
3 mean, I'm not asking why you didn't, why do you say it's
4 not?

5 MS. CESARE: Our point is that her story
6 changed after March 16th, 2009. It's not a recent
7 fabrication. There's --

8 THE COURT: No, but her story -- the recent
9 fabrication generally is the one that she's given in the
10 court, and you show prior inconsistent statement to show
11 that the claim in court is a recent fabrication.

12 MS. CESARE: It would only be admissible if the
13 Government had some evidence that she had made a
14 consistent statement prior to March 13th or March 16th,
15 but there was a prior consistent statement that existed
16 before the statement I impeached her with. In that case
17 we would fall into a recent fabrication scenario.

18 THE COURT: I don't quite understand the
19 significance of the distinction, but I'm not going to let
20 it -- I'm not going to let the affidavit in, but I am
21 going to allow -- I just -- well, first of all, the
22 doctrine of rehabilitation basically allows prior
23 consistent statement may be used to rehabilitation when
24 the statement has a probative force bearing on
25 credibility beyond showing repetition, and I think -- I

Ms. Herczeg - Redirect - Ms. Stone

1 was reading from United States versus Pierre,
2 P-i-e-r-r-e, 781 F2d 329, and my feeling is it does, it
3 just leave it is impression that during a -- roughly a
4 period of, I don't know, 30 days. What was the
5 difference in time?

6 MS. CESARE: Six weeks.

7 THE COURT: Between the statement you used and
8 the statement she -- the government wants to rehabilitate
9 with.

10 MR. SPECTOR: About a month, yeah. Five weeks
11 maybe.

12 THE COURT: Five weeks. She actually did it --
13 did make a statement that was not so much -- that was in
14 effect -- that did in fact implicate him in the way that
15 we've been talking about, I don't want to go into the
16 exact testimony, exact substance, when the implication
17 that's left is that she hadn't said it, and this was the
18 first time she's essentially saying this.

19 MS. CESARE: We're not going to make that
20 argument it's the first time she said it, we're going to
21 make the argument that she didn't describe what had
22 happened to her close in time to the incident. She was
23 in -- she had two --

24 THE COURT: It was close in time -- yours -- I
25 mean we're talking about statements that were made that

Ms. Herczeg - Redirect - Ms. Stone

1 were roughly 30 days apart.

2 MS. CESARE: Well, the statements I confronted
3 her with were statements she made in the safety of the
4 police department with Investigator Merritt and then in
5 the safety of the prosecutor's office with prosecute, Ms.
6 Stone. The statements I confronted her with were
7 statements that were made on March 13th, 2009 and March
8 16th, 2009.

9 THE COURT: I understand that.

10 MS. CESARE: A week or two after the events she
11 described in the Yannai residence.

12 THE COURT: I didn't -- they're arguing about
13 whether you could have done that. The question is the
14 implication is left that during that period roughly,
15 whether you know, before or after, she didn't also, you
16 know, say what the government now wants to elicit, and
17 you know, my feeling is that there's something unfair and
18 misleading about that, and I'm not even sure that you're
19 right, you're not arguing that it's a recent fabrication.
20 I don't see how in general it would not be. I mean she's
21 testified that X occurred, you're saying that she's
22 testified -- she gave a statement that says Y.

23 MS. CESARE: Your Honor, I think --

24 THE COURT: I mean, I don't --

25 MS. CESARE: In order for the government to get

Ms. Herczeg - Redirect - Ms. Stone

1 in a prior consistent statement --

2 THE COURT: Well, we're not --

3 MS. CESARE: -- through their witness --

4 THE COURT: Well, that's offered in evidence.

5 For the moment I'm not -- I'm willing to be more cautious

6 --

7 MS. CESARE: In order for the government -

8 THE COURT: -- and give a statement that
9 basically this is not being offered for the -- it's not -
10 - they should not -- the jury should not consider it for
11 its truth, but merely to the extent that it bearing on
12 her credibility.

13 MS. CESARE: Your Honor, in order for the
14 government to avail themselves of getting in a prior
15 consistent statement of their own witness they have to
16 convince you that the statement I elicited was a recent
17 fabrication. The government has to --

18 THE COURT: That's not my understanding.

19 MS. CESARE: -- has to establish that --

20 THE COURT: That's just the opposite of my
21 understanding. My understanding is that the recent
22 fabrication is the fabrication in the courtroom and that
23 the reason that that's a recent fabrication was because
24 on a prior occasion she said something different. That's
25 my understanding of that doctrine. I don't understand, I

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1 mean you've got it -- unless I'm seriously mistaken
2 you've got it totally reversed.

3 MR. SCHNEIDER: I think she may have misspoke.
4 Can I just understand what the ruling is going to be so
5 maybe we can -- I mean is the jury going to get this
6 piece of paper or is she just going to be about to ask
7 questions about --

8 THE COURT: I'm willing to be a little bit more
9 cautious, but I don't, you know, I'm willing to let the
10 jury know that during this period of time in order to
11 avoid a misleading impression that she also said what the
12 government wants to elicit, but I don't understand why --
13 I don't understand your argument about why this isn't a
14 claim of recent fabrication. That is the claim in the
15 courtroom, it's not whether the --

16 MR. SCHNEIDER: I think our argument is just a
17 timing argument. We believe that this witness fabricated
18 the testimony between March 16th and April 22nd, and we
19 never said anything different, because we don't -- we
20 acknowledge --

21 THE COURT: That's what you're saying now, but
22 the jury doesn't know what was said on April 16th.
23 That's the point.

24 MR. SCHNEIDER: I understand.

25 THE COURT: But the point is that she's

Ms. Herczeg - Redirect - Ms. Stone

1 fabricated -- this is the recent fabrication.

2 MR. SCHNEIDER: It was more the timing of it,
3 is that we didn't -- it's obvious that she's changed her
4 story, that's obvious.

5 THE COURT: Right. Well, that's what normally
6 is a claim of recent fabrication.

7 MR. SCHNEIDER: Correct. But we --

8 THE COURT: That's basically the definition of
9 it.

10 MR. SCHNEIDER: And our position is that a
11 prior consistent statement would only be relevant if it
12 indicates that the fabrication occurred -- I'm sorry --
13 yes, that it indicates that she gave a consistent
14 statement at the same time period where we are saying
15 that she gave inconsistent statements.

16 THE COURT: She did. The same time period is
17 roughly 30 days. I mean --

18 MR. SCHNEIDER: Well, we're talking about a
19 week after her report and a month later. We don't view
20 that --

21 THE COURT: Oh, I think you're wrong.

22 MS. STONE: Your Honor, if I might just add
23 that it's also our contention that there was a
24 misimpression that this witness fabricated the testimony
25 in order to procure a visa, and that affidavit was filled

Ms. Herczeg - Redirect - Ms. Stone

1 out long after -- in June of 2009, which was long after
2 this warrant affidavit that's completely consistent with
3 her trial testimony.

4 THE COURT: Look, I'm going to let her -- I'm
5 not going to let the affidavit in. I'm going to let her
6 ask the witness whether she said -- I'm going to overrule
7 the objection to the question.

8 MS. STONE: Thank you, Judge.

9 MR. SCHNEIDER: Judge, we have another issue
10 about the police testimony. Should we address that now
11 or maybe since we're going to have lunch?

12 THE CLERK: We can do that after lunch.

13 MR. SCHNEIDER: Okay.

14 THE COURT: I don't know how long you're going
15 to be with this witness, I don't.

16 MR. SCHNEIDER: Well, it's almost -- it's 20 to
17 1:00.

18 THE COURT: Let's go.

19 MR. SCHNEIDER: Okay.

20 THE COURT: Let's bring in the jury.

21 (Pause.)
22
23
24
25

Ms. Herczeg - Redirect - Ms. Stone

1 THE CLERK: All rise.

2 (Jury enters the courtroom.)

3 THE CLERK: Please be seated.

4 REDIRECT EXAMINATION

5 BY MS. STONE:

6 Q. Bernadett, you recall that you were asked some
7 questions about your initial statements to the police in
8 the middle of March 2009? Do you remember you were asked
9 some questions about your initial statements to the
10 police?

11 A. No.

12 Q. On cross-examination you were asked about meeting
13 with the police the night that you left the defendant's
14 house.

15 A. Yes.

16 Q. And then a couple of days later you had a meeting
17 with Investigator Merritt and you also discussed --

18 A. Yes.

19 Q. -- some of the things that had happened in the
20 defendant's house. And then you gave Investigator
21 Merritt a sworn statement in April of that day. Do you
22 remember typing out and swearing to a statement in April
23 of that year?

24 A. Yes.

25 Q. And in that statement, Bernadett, did you talk about

Ms. Herczeg - Redirect - Ms. Stone

1 the promise that you were going to be paid \$20,000 after
2 a year of work?

3 A. Can't remember.

4 MS. STONE: If I could just show this to the
5 witness and see if it refreshes her recollection?

6 THE WITNESS: Uh-huh.

7 Q. Take a look at the highlighted section.

8 A. Yes.

9 Q. So does that refresh your recollection?

10 A. Yes.

11 Q. Okay. Now -- and in this sworn affidavit from April
12 of 2009, did you also put in writing that at times the
13 defendant wanted to perform oral sex and you were
14 refused, that he tried to force you to perform oral sex
15 by pushing your head to his penis and you refused and
16 told him you didn't want to do it, that even after you
17 refused he still tried to force you. Do you recall
18 telling the police that?

19 A. Yes.

20 Q. And do you also recall that in this sworn affidavit
21 you provided information about the many times that the
22 defendant touched your breasts?

23 A. Uh-huh, yes.

24 Q. And that also that he had forced you to hug and kiss
25 him and to make your touch his penis by moving your hand

Ms. Herczeg - Redirect - Ms. Stone

1 down to it?

2 A. Yes.

3 Q. And do you also recollect that you told the police in
4 this sworn affidavit that he would kiss your breasts very
5 hard causing lots of pain and that he would bite your
6 breasts, do you recall telling that to the police in this
7 sworn affidavit?

8 A. Yes.

9 Q. And Bernadett -- and when you gave that sworn
10 affidavit that was about five weeks after you left the
11 defendant's house?

12 A. Yes.

13 Q. And at that point you were staying in a shelter; is
14 that right? Or were you staying with your friends?

15 A. I can't remember the date that I moved to the
16 shelter.

17 Q. Now Bernadett you had, at the shelter there was a --

18 THE COURT: Ladies and gentlemen, before this
19 goes on I just want to tell you something about this --
20 the witness's statement about what he said in an
21 affidavit in April 2009. You have to determine whether
22 the witness is testifying truthful here in court, and of
23 course the fact that somebody has repeated something on
24 prior occasions doesn't necessarily mean it's true. You
25 have to decide based on all the evidence whether you

Ms. Herczeg - Redirect - Ms. Stone

1 credit the testimony of the witness. I've let that
2 testimony come in to help you determine and make a
3 judgment about whether the testimony given in court is
4 true or not.

5 Q. Bernadett, when you were staying at the shelter did
6 the shelter help provide you with an immigration lawyer?

7 A. Yes.

8 Q. And to resolve whether or not you could stay in the
9 United States?

10 A. Yes.

11 Q. Was this lawyer helping you with any legal
12 immigration issues you might have?

13 A. I believe so.

14 Q. And why were you staying in the United States in
15 2009, and why have you stayed?

16 A. The reason why I stay is -- was because I wanted to
17 help out the case.

18 Q. And when you filled out your application for the visa
19 did the lawyer type up the application and go through it
20 with you?

21 A. Yes.

22 Q. I'm just going to have you take a look. And you
23 reviewed everything in the application with the lawyer?

24 A. Yes.

25 Q. Now, Bernadett, before you got on the plane and came

Ms. Herczeg - Redirect - Ms. Stone

1 from Hungary to the United States did you think you were
2 going to have a sexual, consensual, romantic relationship
3 with the defendant?

4 A. No.

5 Q. And I'm just going to ask you to take a look at
6 what's been entered into evidence, and I'm going to ask
7 that this be published for the jury. Do you see the two
8 underlined --

9 A. Yes.

10 Q. -- parts of this e-mail? Who is this e-mail from?

11 A. It's from Joanna.

12 Q. Do you know who Joanna is? Do you know now who
13 Joanna is?

14 A. Yes.

15 Q. Who do you believe Joanna is?

16 A. Joanna is Mr. Yannai.

17 Q. Could you read those lines that have been underlined,
18 please.

19 A. "I don't want ever to feel that a woman is having sex
20 with me just because even maybe there's a small part
21 there's a possibility that she's doing it because she's
22 afraid to lose her job or lose the roof above her head.
23 When Joseph needs a massage he calls a professional
24 masseuse."

25 Q. Bernadett, have you ever wanted to have a consensual

Ms. Herczeg - Recross - Ms. Cesare

1 romantic relationship with the defendant?

2 A. No.

3 MS. STONE: Can I have just one moment?

4 THE COURT: Uh-huh.

5 MS. STONE: We have no further questions.

6 RECROSS-EXAMINATION

7 BY MS. CESARE:

8 Q. Ms. Herczeg, you could Have flown back to Hungary as
9 scheduled and still helped out in this case.

10 MS. STONE: Your Honor, that's beyond the scope
11 of the redirect.

12 THE COURT: Overruled.

13 THE WITNESS: I didn't know about that.

14 Q. You could have flown back here to testify?

15 A. I didn't know about that.

16 Q. The prosecutor talked to you about an affidavit you
17 swore out on April 22nd, 2009; is that right? Do you
18 remember the date of the affidavit she asked you about?

19 A. I don't remember the date.

20 Q. All right. I'm going to show you something and see
21 if it helps you remember the date, all right? Just for
22 the witness. Do you see anything on this that helps you
23 remember the date?

24 A. Yes.

25 Q. You swore out that affidavit on April 22nd, 2009,

Ms. Herczeg - Recross - Ms. Cesare

1 correct?

2 A. Yes.

3 Q. And that was about five weeks after you left the
4 Yannai residence, correct? You left the Yannai residence
5 on March 11th, 2009, right?

6 A. Yes.

7 Q. So five, six weeks later?

8 A. Yeah, five, maybe.

9 Q. During that five, six period of time the prosecutor
10 helped you get housing in a women's shelter, right?

11 A. Yes.

12 Q. So when you left the Yannai residence you stayed with
13 your friends Csilla and Andras for a short period of
14 time, correct?

15 A. Yes.

16 Q. And they lived on the estate of Clive Davis, right?

17 A. Yes.

18 Q. And then you left there and went to a shelter, right?

19 A. Yes.

20 Q. Ms. Stone helped you find that housing, right? Or
21 people in her office helped you find it.

22 A. I believe so.

23 Q. And while you were at the shelter you had counseling,
24 right?

25 A. Yes. Yes.

Ms. Herczeg - Recross - Ms. Cesare

- 1 Q. And you got a life skills class?
- 2 A. Yes.
- 3 Q. And you were living there with other women who had
- 4 been in domestically violent situations?
- 5 A. Yes.
- 6 Q. And you talked to them about your case? Did you talk
- 7 to anybody about your case at all?
- 8 A. No.
- 9 Q. And while you were at the shelter did you get any
- 10 public assistance benefits?
- 11 A. Which means?
- 12 Q. Money?
- 13 A. Money for personal use?
- 14 Q. Yeah.
- 15 A. No.
- 16 Q. Did you get money for anything?
- 17 A. We had money for transportation. That was it.
- 18 Q. And did you have any money for rent assistance or
- 19 anything?
- 20 A. It was provided.
- 21 Q. Okay. And the shelter gave you -- helped you get
- 22 transportation to the prosecutor's office when you needed
- 23 to go there?
- 24 A. Yes.
- 25 Q. And it was after living in that shelter for several

Ms. Herczeg - Recross - Ms. Cesare

1 weeks that you made the April 22nd, 2009 statement in
2 your affidavit, right?

3 A. I don't remember the date when I moved into the
4 shelter.

5 Q. But you'd been living in that shelter several weeks
6 before you made your April 22nd, 2009 statement?

7 A. I don't remember the date when I moved to the
8 shelter.

9 Q. Well, how long did you stay with Csilla and Andras?

10 A. I believe three weeks.

11 Q. All right. And so you probably stayed at the shelter
12 two or three weeks before you made the statement, right?
13 Before you made the April 22nd, 2009 statement. Maybe
14 one week.

15 Q. One week?

16 A. One or two, I --

17 Q. Okay.

18 MS. CESARE: No further questions.

19 MS. STONE: None, Your Honor.

20 (Witness excused.)

21 THE COURT: Who's next? Next witness.

22 MR. SCHNEIDER: Your Honor, the next witness is
23 in the bathroom.

24 THE COURT: I'm going to try and work a little
25 beyond what I normally do for lunch because we may be

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Mr. Merritt - Direct - Mr. Stone

1 able to finish up and you could go home altogether. So
2 if I can do that I may keep you a little longer. If
3 you're really hungry and you want me to take a -- okay.

4 (Pause.)

5 THE COURT: My case manager who always arguing
6 with me says that I'm wrong, we're not going to be able
7 to get them in before lunch, so we'll see. Would you
8 raise your right hand.

9 **C O R N E L I U S M E R R I T T ,**

10 **having been first duly sworn, was examined and**
11 **testified as follows:**

12 DIRECT EXAMINATION

13 BY MS. STONE:

14 Q. Good afternoon. Investigator Merritt, can you please
15 describe what your job is?

16 A. I'm an investigator with the New York State's
17 division of State Police Bureau of Criminal
18 investigation.

19 Q. And what is your experience, Investigator Merritt?

20 A. I'm a 25 year member of the New York state Police, 20
21 years as a uniformed trooper, and the past 5 years or so
22 as an investigator.

23 Q. And where are you assigned, Investigator Merritt?

24 A. Somers, New York, Westchester county.

25 Q. Are there other local police that work in the area of

Mr. Merritt - Direct - Mr. Stone

1 Somers?

2 A. Yes.

3 Q. And can you describe the role of the local police and
4 what departments there are?

5 A. Okay. The area we cover is a four town area, each
6 area -- each town is covered by both the State Police and
7 a part-time police department. These towns are Somers,
8 North Salem, Lewisboro, and Pound Ridge.

9 Q. And what is the role of the local police versus the
10 State Police?

11 A. Okay. All the local police, they are sworn police
12 officers, they are part-time though, they do not have
13 investigative personnel full-time. So anything,
14 generally felony level would come to the State Police.

15 Q. And in Pound Ridge do you have any idea how many
16 officers there are?

17 A. I believe about 16 or so --

18 Q. Are any --

19 A. -- with a full-time chief.

20 Q. Are the rest full-time or part-time?

21 A. To my knowledge they are all part-time.

22 Q. And can you describe the setting of Pound Ridge, New
23 York, please.

24 A. Pound ridge is a -- it's a small town about 50 miles
25 north of New York City, it's rural in character, quite

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1 spread out, consisting of a lot of secondary homes,
2 people from places like New York City that have weekend
3 homes splitting between full-time residents and part-time
4 residents.

5 Q. And is there any commerce in Pound Ridge, New York?

6 A. Very little. There is one business district referred
7 to as Scotts Corners, it's like a hamlet within the town
8 consisting of just small businesses. Restaurants,
9 hardware store, antiques, galleries, and things of that
10 sort.

11 Q. Do you know how far that is approximately from the
12 defendant's home?

13 A. From the defendant's home it's probably four miles.
14 At least four miles.

15 Q. And what type of transportation is there -- public
16 transportation in Pound Ridge?

17 A. None. None.

18 Q. And --

19 A. Aside from -- there are Taxi services in surrounding
20 towns that could be called, but as far as any buses or
21 trains your standard what we would refer to as public
22 transportation there is none.

23 Q. Do you know the address of the defendant's home?

24 A. Yes, it's 309 Salem Road, Pound Ridge, New York.

25 Q. And would you be able to say approximately the

Mr. Merritt - Direct - Mr. Stone

1 closest commercial establishment would be from the
2 defendant's home?

3 A. The closest commercial establishment to the
4 defendant's home would probably be about two and a half
5 miles north of that residence. There's a mobile station,
6 gas station and a small liquor store on Route 35 in South
7 Salem, and about equal distance from the residence
8 there's also a small deli, the Salem Market located on
9 spring street in South Salem.

10 Q. Any sidewalks leading to those establishments?

11 A. No, no. No sidewalks.

12 Q. Now when did you become involved in the investigation
13 of the defendant, Joseph Yannai?

14 A. March 13th, 2009.

15 Q. And how did you become involved?

16 A. I was advised by my supervisor, Senior Investigator
17 Patrick Bosley (ph), that the Pound Ridge police had been
18 referred a case of possible human trafficking.

19 Q. And again, would the Pound Ridge police have
20 investigators who would normally investigate that type a
21 case?

22 A. No, that's the kind of case that would be turned over
23 to the State Police.

24 Q. So after it was referred to you what was your first
25 step in the investigation?

Mr. Merritt - Direct - Mr. Stone

1 A. My first step, Sergeant Mark Miller of the Pound
2 Ridge Police Department arrived at my station in Somers
3 with Bernadett Herczeg. I briefly spoke to Sergeant
4 Miller who basically gave me a timeline of how his
5 department had come across this case.

6 Q. And did you also have a conversation with Ms.
7 Herczeg?

8 A. I did.

9 Q. And following your conversation with Ms. Herczeg did
10 you apply for a search warrant relating to the
11 defendant's residence?

12 A. I did.

13 Q. And do you recall when you executed that search
14 warrant?

15 A. Search warrant was executed March 23rd, 2009.

16 Q. And who was at the house when you executed the search
17 warrant?

18 A. Residents at the house or --

19 Q. Yes.

20 A. -- people within the house on arrival? A gentleman
21 subsequently identified to me as Joseph Yannai, a woman
22 from France named Isabelle Krintz, and a woman from
23 Brazil named Gisele Lunkes, L-u-n-k-e-s.

24 Q. And do you see the defendant, Joseph Yannai, in court
25 today?

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1 A. I do.

2 Q. And could you just describe him, please.

3 A. He's the gentleman sitting at the table to my right
4 with the beard and hand under his chin.

5 MS. STONE: Let the record reflect that
6 Investigator Merritt identified the defendant.

7 Q. Now while the search warrant was being executed were
8 there any interviews conducted?

9 A. There were.

10 Q. And who was interviewed?

11 A. Mr. Yannai was interviewed by myself at the start of
12 the search warrant procedure. Ms. Lunkes was interviewed
13 by Investigator Michael Davis, and Ms. Krintz was
14 interviewed by Investigator Jennifer Hahl, H-a-h-l.

15 Q. And did the defendant interact with either of these
16 women before the interviews were conducted?

17 A. He did. As I was speaking to Mr. Yannai in the
18 upstairs living room area Investigator Davis was
19 attempting to have Gisele Lunkes accompany him to another
20 part of the house so that he could speak to her, at which
21 time Mr. Yannai became very agitated, ordered Ms. Lunkes
22 not to go with Investigator Davis, and she appeared very
23 conflicted as to what she could do. Eventually going the
24 Investigator Davis.

25 Q. Now what time of day was it when you executed the

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1 search warrant?

2 A. We arrived at the residence at 3 p.m.

3 Q. And how was the defendant dressed when you arrived at
4 3 p.m. to his residence?

5 A. He was in a bathrobe.

6 Q. And how were the other two women dressed?

7 A. I would say business attire for a woman. Blouse and
8 skirt and shoes.

9 Q. Now before collecting evidence you mentioned that you
10 interviewed the defendant, and can you tell us where that
11 interview took place?

12 A. The interview took place on the upper level of the
13 residence in the what I would refer to as a living room
14 area.

15 Q. And where -- who was present for that interview?

16 A. Well, it was myself, Mr. Yannai, I know my
17 supervisor, Senior Investigator Patrick Bosley was in the
18 area.

19 Q. And did you explain the purpose for why you wanted to
20 speak to Mr. Yannai?

21 A. I did. He was advised that we were there pursuant to
22 the issuance of a search warrant by the town of Pound
23 Ridge Court.

24 Q. And did you ask him any questions?

25 A. I did.

Mr. Merritt - Direct - Mr. Stone

1 Q. And can you tell us what the defendant told you?

2 A. Well, I told Mr. Yannai the purpose of our visit, the
3 search warrant, and the allegations that were made that
4 led to the issuance of the search warrant.

5 I asked Mr. Yannai about his employment of
6 women in the residence. He stated to me that they were
7 personal assistants.

8 I asked him how many girls he had had at the
9 residence and he stated there were three or four over the
10 years.

11 I asked him about any payment arrangements and
12 he mentioned that a \$20,000 bonus after a years work.

13 I asked him if any of the girls had been paid,
14 he said yes. I asked him in what manner, he said they
15 were paid by check.

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Mr. Merritt - Direct - Mr. Stone

1 A. I specifically asked about Ms. Lunkes, knowing
2 that she had been at the residence, information I had
3 gotten from Ms. Herczeg that she'd been at the residence
4 for about a year and a half.

5 *MR. SCHNEIDER: Objection. Relevance and
6 hearsay.

7 THE COURT: I think he's explaining why he
8 asked the question, but we'll strike it. Just say what
9 you did.

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Mr. Merritt - Direct - Mr. Stone

1 THE WITNESS: Okay. I -- get my train of
2 thought here.

3 Q. Investigator Merritt, did the defendant say anything
4 about Ms. Lunkes and who she was?

5 A. Yes. Yes, he did. When I asked if Ms. Lunkes had
6 been paid he stated that she was a good friend and that
7 she had not been paid.

8 Q. And did he say anything about what his personal
9 assistants did in terms of work in the house?

10 A. I asked the duties of the personal assistants and he
11 stated that they were there for computer work as part of
12 his publishing business and to be neat and to be clean.

13 Q. Did he say anything to you about how he found his
14 personal assistants?

15 A. He stated that he had a friend, a woman that worked
16 for him at one point named Joanna, a Polish woman that
17 would find women over the internet to work for him.

18 Q. And did he say anything about any sexual demands?

19 A. I asked him if there were sexual demands placed on
20 any of the women in the house and he stated no.

21 Q. So after speaking to Mr. Yannai did you continue with
22 your collection of evidence?

23 A. I did.

24 Q. What evidence were you permitted to seek pursuant to
25 this search warrant?

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Mr. Merritt - Direct - Mr. Stone

1 A. Search warrant permit the seizure of any and all
2 computers located within the residence, documentation
3 concerning the operation and ownership of computers found
4 within the residence, file, any files, income tax
5 records, financial records related to the hiring of
6 people to work in the residence. Any other documentation
7 as to people having worked in the residence.

8 Q. And Investigator Merritt, did you search the
9 residence for bank records concerning payment to the
10 personal assistants?

11 A. Yes.

12 Q. Did you find any canceled checks for payment of
13 bonuses?

14 A. I did not.

15 Q. Did you find any bank record at all concerning
16 payment or employment of a personal assistant?

17 A. No.

18 Q. Now during -- Investigator Merritt, after the search
19 warrant did you continue with your investigation?

20 A. I did.

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Mr. Merritt - Direct - Mr. Stone

1 Q. And as a result of that investigation did you learn
2 how many women worked as personal assistants in the
3 house?

4 MR. SCHNEIDER: Objection.

5 THE COURT: Sustained.

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Mr. Merritt - Direct - Mr. Stone

1 Q. Investigator Merritt, were there other types of files
2 that you found during the search?

3 A. Yes. In addition to seizure of the computers and
4 storage medium located within the residence in the
5 downstairs portion of the residence adjacent to the
6 office area there were boxes of files that were seized,
7 and also a hanging file folder labeled employees secured
8 from an area downstairs in the residence.

9 Q. Did one of these -- excuse me -- did two of these
10 boxes involve particular au pair questionnaires?

11 A. Yeah. There were three large boxes of files that
12 were seized pursuant to the search warrant, two of the
13 them contained questionnaires of au pairs, very lengthy,
14 detailed questionnaires. The third box contained
15 profiles of the au pairs with information on each.

16 MS. STONE: Your Honor, I would just ask if we
17 could approach the witness with the evidence?

18 THE COURT: You don't have to approach -- you
19 don't have to ask me to approach.

20 MS. STONE: Okay.

21 THE COURT: It wastes time.

22 MR. SCHNEIDER: Your Honor, I have a previously
23 noted objection to this evidence.

24 THE COURT: I understand. My ruling is the
25 same, it's overruled.

Mr. Merritt - Direct - Mr. Stone

1 (Pause.)

2 Q. Investigator Merritt, the two boxes that were just
3 placed on the podium next to you, do you recognize those
4 boxes?

5 A. I do.

6 Q. And what do you recognize them to be?

7 A. They were boxes -- or files seized from the
8 defendant's address pursuant to the search warrant.

9 Q. Have they been changed or altered in any way?

10 A. The only alteration was the covering. We typically
11 seal up evidence, and the evidence tape is the State
12 Police evidence tape and the covers were placed on the
13 boxes by me.

14 Q. And are the contents of the boxes the same as what
15 you collected during the search?

16 A. Yes.

17 Q. And did you ever release these boxes to anyone?

18 A. They were released to representatives of the
19 department of Homeland Security, Immigrations and Customs
20 Enforcement for a review, and I believe photocopying in
21 connection with the prosecution of this case.

22 MS. STONE: Your Honor, we now move what's been
23 marked as Government's Exhibit No. 1 into evidence.

24 *MR. SCHNEIDER: Holding previous stated
25 objection.

Mr. Merritt - Direct - Mr. Stone

1 THE COURT: It's admitted.

2 (Government's Exhibit No. 1 received in evidence.)

3 Q. Now, Investigator Merritt, I would just ask that this
4 be published to the jury. Is this an example of one of
5 the questionnaires in the box?

6 A. Yes.

7 Q. And could you just explain to the jury who the --
8 what the purpose of this questionnaire was according to
9 the survey, if you know what it's for?

10 A. Well, it's -- like I said, it's a very lengthy
11 questionnaire, probably over 100 questions on the
12 questionnaire.

13 Q. Who was the publisher of the questionnaire?

14 A. Publisher was Y2 or Y Square Communications Corp.

15 Q. And what was this for? It was publisher for what
16 type of a transcript or book?

17 A. It says publisher of the au pair world and the
18 address listed is the same address as that of the
19 defendant.

20 Q. And when you conducted your search of the defendant's
21 residence did you ever see a manuscript or book entitled
22 the au pair world?

23 A. I did not.

24 Q. Now going through these questions, I'm just going to
25 show you the various different pages, what types of

Mr. Merritt - Direct - Mr. Stone

1 questions are asked on this questionnaire?

2 A. The question are very far ranging from pedigree
3 information to family life to require au pair experiences
4 to expectations of, you know, their work in the au pair
5 field. Relationships with the host families. Different
6 -- you know, what they would do with the host families,
7 who was allowed with the host families, not allowed. As
8 far as outside of the employment what they would be
9 doing. Socializing, et cetera.

10 Q. Were there particular questions about whether or not
11 the au pair felt comfortable about leaving a fiancé or a
12 boyfriend for a period of time?

13 A. There were, yes.

14 Q. I would just direct you to question number 50, if you
15 could just read that.

16 A. "If you had a fiancé/boyfriend what was his reaction
17 to your going away to be an au pair."

18 Q. And question 51 as well.

19 A. "How did you feel about leaving your fiance/boyfriend
20 for a substantial period of time?"

21 Q. I'm also going to direct you to -- I'm sorry --
22 question 64, and if you could just read that question.

23 A. "Did you consult with family members/friends as to
24 which of the families who approached you you should
25 choose? If yes, with whom?"

Mr. Merritt - Direct - Mr. Stone

1 Q. And do you have any idea approximately in those boxes
2 how many answers to these au pair questionnaires there
3 were?

4 A. How many responses?

5 Q. Yes, to those boxes?

6 A. Hundreds. I did not count them individually, but
7 they're a significant number.

8 Q. Now did you also collect another box of evidence?

9 A. Well, the third box of three contained profiles of au
10 pairs. Not the questionnaires -- separate from the
11 questionnaires are profiles.

12 Q. Investigator Merritt, I'd ask you to just take a look
13 at what's been previously marked as Government Exhibit
14 No. 2.

15 A. Inside the box?

16 Q. Do you recognize that?

17 A. I do.

18 Q. What is that, Investigator Merritt?

19 A. This is a box of au pair profiles. Hundreds and
20 hundreds of au pair profiles.

21 Q. And besides for the tape that is -- that's been
22 removed --

23 A. Uh-huh.

24 Q. -- is this box in every other respect the same as
25 when you collected it at the defendant's residence?

Mr. Merritt - Direct - Mr. Stone

1 A. Well, it is. One addition to the box itself, this
2 was one -- listed as one evidence item for State Police
3 purposes, and I labeled the box -- I'm sorry -- I labeled
4 the boxes, boxes -- box one of three, two of three, and
5 three of three. So that is State Police marking on the
6 box. Other than that it is the box.

7 MS. STONE: We would now move what's been
8 previously marked as Government's Exhibit No. 2 into
9 evidence.

10 MR. SCHNEIDER: Holding my previous objection.

11 THE COURT: It's admitted.

12 (Government's Exhibit No. 2 received in evidence.)

13 Q. Now as to that box, Investigator Merritt, could you
14 just take a look at the au pair profiles.

15 A. Any of them?

16 Q. Are they organized in any particular way?

17 A. There are stickers alphabetically, it appears to be
18 alphabetically, the white -- it looks like a
19 pharmaceutical company's note pad, sticky pad, then some
20 individual -- many actually individual profiles have
21 yellow stickies on them with no designation as to why
22 they're marked.

23 Q. And can you tell us what au pair websites those
24 profiles have been selected from?

25 A. Okay. May I look at a sample profile?

Mr. Merritt - Direct - Mr. Stone

1 Q. Yes.

2 A. Going off memory the Aupairconnect.com, Au Pair
3 Profile, au Pair connect-worldwide Au Pair. Well, that's
4 a description actually. AupairConnect.com.

5 Q. Can you take a look to see if there's any other au
6 pair websites?

7 A. On any of these?

8 Q. Yeah, just take a look at the profiles for a moment.

9 A. Okay, I believe there -- maybe with a few exceptions,
10 most of them are this Au Pair Connect. GreatAupair.com
11 is another one. I'm sorry.

12 Q. Thank you, you can put that back, Investigator
13 Merritt?

14 A. GreatAupair.com. They're all apparently au pair
15 websites.

16 Q. And Investigator Merritt, did you also as part of
17 your search seize a file that was labeled an employee
18 file?

19 A. I did.

20 (Pause.)

21 Q. Investigator Merritt, I would just ask you could open
22 up that envelope that's be handed to you?

23 A. Done.

24 Q. Yes. Can you remove what's inside? Oh, there you
25 have it.

Mr. Merritt - Direct - Mr. Stone

1 A. I have it.

2 Q. What is that?

3 A. This is a green Pendaflex hanging file, letter size,
4 and on the tab states employees.

5 Q. And has that file been changed in any way since the
6 time that you collected it?

7 A. No.

8 MS. STONE: Your Honor, we would now move
9 what's been marked as Government's Exhibit No. 3 into
10 evidence.

11 MR. SCHNEIDER: We need to review it.

12 (Pause.)

13 MR. SCHNEIDER: I have an objection. Its
14 relevance.

15 MS. STONE: Your, the defendant has been
16 charged with --

17 THE COURT: Please, I don't want to hear
18 argument in front of the jury.

19 MS. STONE: Okay.

20 THE COURT: How much longer do you have with
21 this witness?

22 MS. STONE: This is really the last -- the last
23 area of questioning is about this file.

24 THE COURT: All right, come up.
25

Mr. Merritt - Direct - Mr. Stone

1 (Conference held at sidebar.)

2 THE COURT: All right, there are a lot of
3 papers in here. Is there a general objection?

4 MR. SCHNEIDER: I understood they were going to
5 put this in, which is one of the witness's passport
6 photos. I don't object to that, but these other people
7 aren't witnesses in the case. I don't see why it's
8 relevant.

9 THE COURT: Her name has come up in the case.

10 MR. SCHNEIDER: Her name has come up, they can
11 put that one in, but I don't understand why they want to
12 prove women who aren't -- this is already in evidence.

13 THE COURT: I can't deal with this. What do
14 you want to put in?

15 MS. STONE: Well, we were --

16 THE COURT: That's not already in evidence? I
17 mean I don't --

18 MS. STONE: Well, there were several specific
19 things from here that we were going to elicit, and if
20 you'd like to reserve it to those, certainly.

21 MR. SCHNEIDER: We don't object to that.

22 THE COURT: Call it by a number.

23 MS. STONE: 3A, 3B.

24 MR. SCHNEIDER: 3B we don't -- 3D we don't
25 object to.

Mr. Merritt - Direct - Mr. Stone

1 MS. STONE: I'm sorry, this is already in
2 evidence, Your Honor. This is regarding Anna Simonsen.

3 UNIDENTIFIED SPEAKER: It's already in.

4 MS. STONE: I believe that's all, Your Honor.

5 MR. SCHNEIDER: Well, just put both in, that's
6 fine.

7 THE COURT: Then we're not arguing about
8 anything here.

9 (Conference concludes at sidebar.)

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Mr. Merritt - Direct - Mr. Stone

1 Q. Investigator Merritt, could you just describe in
2 general what the employee file was?

3 A. The complete file contained numerous records
4 containing the names of numerous different women. There
5 were travel itineraries within that file primarily
6 showing entry into the country into JFK airport from
7 different countries throughout the world.

8 Q. Okay. I'm now going to show you what's been
9 previously marked as Government's Exhibit 3A. Do you
10 recognize that from the employee file?

11 A. I do.

12 Q. Can we publish --

13 MS. STONE: Is there any objection to the
14 exhibits we discussed?

15 MR. SCHNEIDER: No.

16 MS. STONE: Admitted into evidence.

17 MR. SCHNEIDER: No objection.

18 MS. STONE: I would ask that 3-A be entered
19 into evidence and it be published to the jury.

20 Q. What is this --

21 THE COURT: It's admitted.

22 (Government's Exhibit No. 3-A, 3-B, 3-C, 3-D, 3-E, 3-F,
23 3-G, 3-H, 3-I and 3-J received in evidence.)

24 Q. -- Investigator Merritt?

25 A. This appears to be a photocopy of a passport of a

Mr. Merritt - Direct - Mr. Stone

1 Vanessa Jasmine Stenzel, a German passport.

2 Q. And now I'm going to show you what's been attached to
3 that. I don't know if you can read that. Can you see
4 what that is, Investigator Merritt?

5 A. I don't speak the language that's portrait, it
6 appears to be German, but it also appears from what I can
7 make out, you know, it references JFK and times and
8 dates. It appears to be a travel itinerary.

9 Q. And finally what's been marked Government's Exhibit
10 3B that has been admitted into evidence.

11 A. That is a DHS customs and border protection visa
12 waiver in the name of Vanessa Stenzel.

13 Q. I'm now also going to show you what's been marked as
14 3C, this to be published to the jury, and do you know who
15 that relates to?

16 A. Well, the name once again is Vanessa Stenzel, and it
17 appears to be flight itinerary to JFK.

18 Q. Is there also some other information on this?

19 A. Well, there's a sticky note from that pharmaceutical
20 company apparently, it says social security, Vanessa, and
21 then has a number on it.

22 Q. And now I would just show you -- are these other
23 pages that were attached to that?

24 A. Yes.

25 Q. Now I'm going to show you what's already been

Mr. Merritt - Direct - Mr. Stone

1 admitted into evidence and ask that it be published to
2 the jury. Do you recognize this from the employee file?

3 A. I do.

4 Q. And I'm going to just turn it over, this is
5 Government's Exhibit 3H. Who is this from?

6 A. It's from Anne Rosa Simonsen of Denmark.

7 Q. And in the employee file did you also see this,
8 what's been previously admitted into evidence as
9 Government's Exhibit 3I?

10 A. I did. That's a profile very similar to the ones
11 contained in one of the large file boxes that was seized,
12 profile of Anne Rosa Simonsen.

13 Q. And where is that profile from?

14 A. It's from the --

15 MS. STONE: Oh, I'm sorry, can we publish this?
16 I thought it -- thank you.

17 THE WITNESS: It appears to be the Au Pair
18 Connection website.

19 Q. And I'm sorry, Investigator Merritt, attached to that
20 au pair profile is there also what's been marked as
21 Government's Exhibit 3J?

22 A. Yes.

23 Q. And it's also been previously entered into evidence.
24 And who is that addressed to, Government's Exhibit 3J?

25 A. Anne -- I'm sorry -- Anne Rosa.

Mr. Merritt - Direct - Mr. Stone

1 Q. Anna Rosa. And who is it from?

2 A. Sylvia is the name.

3 Q. And finally, I must, I'm going to show you what's
4 been previously marked as Government's Exhibit 3D, I'd
5 ask that this be published to the jury, and that has been
6 agreeable be admitted into evidence. What is this,
7 Investigator Merritt?

8 A. That is a passport -- it appears to be a -- well,
9 visa with a photograph of Gisele Lunkes, also showing a
10 visa stamp of July 21st, 2007 entering the country, New
11 York City.

12 Q. And I'm going to show you what's been marked as
13 Government's 3E. And can you explain what that
14 particular document is?

15 A. It appeared to me to be pedigree information on
16 Gisele Lunkes and her family. Address, phone number,
17 parent's names, notation that the father is deceased. I
18 assume it's father, Hugo Lunkes.

19 Q. And finally 3G. I'm, I shouldn't have said finally
20 there's one more. Can you read that, Investigator
21 Merritt?

22 A. Okay. Once again it appears to be another document
23 generated upon Ms. Lunkes entry into the United States on
24 July 21st, 2007. Departure from Brazil I believe. I
25 don't know if the original is any clearer, and it does

Mr. Merritt - Cross - Mr. Schneider

1 have her information on it though, her name.

2 Q. And finally, Investigator Merritt, if you could just
3 take a look at what's been previously marked as
4 Government's Exhibit 3F.

5 A. Uh-huh.

6 Q. And if you're able to tell us what you believe this
7 to be.

8 A. Okay. This appears to be another travel itinerary.
9 I don't speak the language, but I can make out enough,
10 the passenger would be Gisele Lunkes.

11 Q. Investigator Merritt, these exhibits, 3F, 3G, 3E, 3D,
12 that all involve Gisele Lunkes, what file was that found
13 in?

14 A. The employee file.

15 MS. STONE: Thank you. I have no further
16 questions, Your Honor.

17 CROSS-EXAMINATION.

18 BY MR. SCHNEIDER:

19 Q. Now investigator you're -- I'm sorry -- you're
20 familiar with Pound Ridge, New York?

21 A. I am, sir.

22 Q. And you are familiar with 309 Salem Road?

23 A. I am.

24 Q. You conducted the search there, correct?

25 A. I did.

Mr. Merritt - Cross - Mr. Schneider

1 Q. And there's -- you described it as a rural area I
2 believe, correct?

3 A. Yes, sir.

4 Q. But there's a house right across the street from 309
5 Salem Road; is that correct?

6 A. There is. There are other houses in the area. Lot
7 sizes are probably between two and four acres, standard.
8 Some bigger.

9 Q. I'm going to --

10 A. -- very few smaller.

11 Q. I'm going to show you what's been admitted into
12 evidence as Defendant's Exhibit P-9. It can be shown to
13 the jury, it's in evidence. How many times have you been
14 to 309 Salem Road?

15 A. I'm sorry, sir.

16 Q. How many have you been to 309 Salem Road?

17 A. Actually been to the residence?

18 Q. Yes.

19 A. To the door of the residence twice. Once for the
20 search and once to return some property.

21 Q. Can you recognize what's depicted in this photo?

22 A. It appears to be a house.

23 Q. Do you recognize that as being taken from the front
24 of the house at 309 Salem Road?

25 A. It very well could be. Without the sign that's

Mr. Merritt - Cross - Mr. Schneider

1 outside the residence or visibility of a car in the
2 driveway or the mailbox I couldn't say for certainty that
3 this was taken from 309.

4 Q. I understand. But where that house is situated --

5 A. Uh-huh.

6 Q. -- assuming this picture was taken from the front of
7 another house, is that about how far away houses are in
8 that part of Pound Ridge?

9 A. In that part of Pound Ridge there could be houses
10 right across from each other. Other situations there
11 might not be. Once again it's a big assumption for me to
12 make that this was taken from 309.

13 Q. I'm not asking you to assume that, I'm asking you
14 about your memory. Do you recall there was a house right
15 across the street from 309 Salem Road?

16 A. I don't recall offhand if the house directly --
17 direct across the street, there are other houses on that
18 road.

19 Q. And it would take a matter of a few minutes at most
20 to reach those other houses if you were walking from 309
21 Salem Road; is that correct?

22 A. Absolutely. Yes, sir.

23 Q. Now you first heard about this case on March 13th; is
24 that correct?

25 A. That is correct.

Mr. Merritt - Cross - Mr. Schneider

1 Q. And you spoke to officers from the Pound Ridge Police
2 Department about what they had learned from Bernadett
3 Herczeg?

4 A. I did.

5 Q. And you next went to the house about ten days later
6 on March 23rd; is that right?

7 A. I did.

8 Q. Do you know in any police officer had contact with
9 Mr. Yannai between March 13th and March 23rd?

10 A. Not to my knowledge. I can't attest to what the
11 Pound Ridge police may have -- if there was contact
12 between the Pound Ridge police. I had no contact.

13 Q. That's all I'm asking.

14 A. Okay.

15 Q. What you know.

16 A. I'm telling you what I know.

17 Q. I'm going to show you, I believe it's part of what's
18 in evidence as Government's Exhibit 1, which is the au
19 pair questionnaire, okay?

20 A. Okay, sir.

21 Q. And since it's in evidence I can put it on the
22 screen. Let me ask you about some of the other questions
23 that are on that questionnaire. Do you see question 68?

24 A. I do.

25 Q. What does that say?

Mr. Merritt - Cross - Mr. Schneider

1 A. It says, "Were you satisfied with the way the agency
2 prepared you for your new job?"

3 Q. And what about agency 72 -- I'm sorry -- question 72.
4 Do you see that one?

5 A. Yes.

6 Q. And what does that say?

7 A. "How would you rate the agency as a whole? From one
8 to ten, ten is the highest rating."

9 Q. I'm going to show you the next page of that document.
10 Actually real question 104.

11 A. "Was the family sensitive to your comfortable with
12 regard to the temperature in the house? For example, if
13 you were too cold in the winter was the problem solved."

14 Q. And how about question 109?

15 A. "If you had disagreements or even fights with the
16 children did the parents back you or take the side of the
17 children? Please give examples."

18 Q. Now on March 23rd you interviewed Mr. Yannai in his
19 living room I think you said?

20 A. It was -- it appeared to be a living room.

21 Q. A large --

22 A. A setting -- a large -- with couches, yes. I would
23 refer to it as a living room if it was my house.

24 Q. A large open area on the main floor of that house?

25 A. The upper level. It's a split level house.

Mr. Merritt - Cross - Mr. Schneider

1 Q. The house where if you're coming from the street
2 that's the level you enter?

3 A. It's up a few -- it's slightly -- the living room is
4 slightly raised.

5 Q. It's the top floor of the house?

6 A. Top floor of the house, yes, sir.

7 Q. And you asked him about the young women who were in
8 the house, right?

9 A. I did.

10 Q. And he told you they were personal assistants,
11 correct?

12 A. That's what he referred to them as, yes, sir.

13 Q. And he told you they did computer work for his
14 publishing business?

15 A. Yes.

16 Q. And that they also had to clean up?

17 A. Yes.

18 Q. You asked him how he paid them and he said that if
19 they're there for a year they got a \$20,000 bonus?

20 A. Yes.

21 Q. And you asked him if he demanded sexual favors from
22 them?

23 A. Yes.

24 Q. And he said no?

25 A. Yes, he did.

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1 MR. SCHNEIDER: Just one second, your Honor.

2 (Pause.)

3 MR. SCHNEIDER: No further questions.

4 MS. STONE: None, Your Honor.

5 THE COURT: You can step down.

6 (Witness Excused.)

7 THE COURT: How long is your next witness going
8 to be?

9 MR. SPECTOR: The next witness will be somewhat
10 longer, probably half an hour.

11 THE COURT: What do you want to do, ladies and
12 gentlemen? Do you want to stay? Okay, call the next
13 witness.

14 MR. SPECTOR: Government calls Denzil Fearon.

15 **D E N Z I L F E A R O N**

16 **having been first duly sworn, was examined and**
17 **testified as follows:**

18 THE COURT: Please be seated.

19 DIRECT EXAMINATION

20 BY MR. SPECTOR:

21 Q. Good afternoon, Inspector Fearon.

22 A. Good afternoon.

23 Q. What do you do for a living?

24 A. I'm the supervisory investigator for the Southern
25 District office of the New York State Police Computer

Mr. Fearon - Direct - Mr. Spector

1 Crimes Unit.

2 Q. And what geographic area does that office cover?

3 A. It covers -- it covers the area south of Albany for
4 the troops. Troops K, Troop F, and Troop L.

5 Q. Explain what your job duties are, please.

6 A. As the supervisory investigator for the southern
7 office I supervise investigators who deal with technology
8 and computer- related crimes. We offer services to
9 state, local, and federal agencies in terms of securing
10 digital evidence and gathering evidence from digital
11 evidence.

12 Q. And what is digital evidence?

13 A. Digital evidence is evidence that has a digital
14 nature. Things such as a computer, a digital camera, a
15 digital video recorder. Any piece of equipment that has
16 the ability to store information digitally.

17 Q. How long have you worked in the State Police Computer
18 Crimes Unit?

19 A. I've work in the State Police Computer Crimes Unit
20 since 2002.

21 Q. Who you think have you been a supervisor there?

22 A. I've been a supervisor since 2006.

23 Q. What did you do before you worked in the Computer
24 Crimes unit?

25 A. Before I was a member of the Computer Crimes unit I

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1 worked for one year as an investigator doing general
2 investigations, and prior to that I was a patrol trooper,
3 a New York State trooper.

4 Q. Can you tell us about just some of the computer
5 training you've received?

6 A. Uh-huh. I received training from the National White
7 Collar Crime Center. I've received training in basic
8 data recovery and acquisition. Received training in
9 advanced data recovery and acquisition. I've received
10 training from SEARCH, which is the national consortium on
11 justice information statistics. I've also received
12 training from the FBI academy in Quantico.

13 Q. And just generally speaking what types of cases do
14 you work on?

15 A. I deal with and I supervise primarily computer-based
16 and technology-based cases. Essentially any type of case
17 that might have a technology component, but in today's
18 world that could be just about any type of case. We're
19 -- or investigators are requested when any sort of
20 digital evidence is available in a case.

21 Q. I want to turn your attention to 2009. Did there
22 come time you were assigned to work on a case involving
23 the defendant, Joseph Yannai?

24 A. Yes.

25 Q. And how did that come about?

Mr. Fearon - Direct - Mr. Spector

1 A. I was requested by the State police in Somers to
2 assist with the execution of a search warrant at a
3 location in Pound Ridge.

4 Q. And generally speaking what did the search warrant
5 authorize you to do?

6 A. The search warrant authorized us to secure any
7 digital evidence, any computers, any imagines of
8 individuals engaged in sexual activity, any paperwork
9 regarding the digital evidence or computers.

10 Q. Did you participate in executing the search warrant?

11 A. Yes, I did.

12 Q. Do you remember what date that took place? Remember
13 approximately what date that took place?

14 A. It was approximately in March.

15 Q. Of what year?

16 A. March of 2009.

17 Q. And do you remember the address you remember
18 searching?

19 A. The address was 309 Salem Road.

20 Q. What home did you understand that to be?

21 A. The home of Joseph Yannai.

22 Q. Had you ever had any contact with Mr. Yannai before
23 coming to his home for that search?

24 A. No.

25 Q. What town was that in?

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1 A. In the town of Pound Ridge.

2 Q. Are you familiar with Pound Ridge?

3 A. Yes.

4 Q. How are you familiar with it?

5 A. For the year that I was doing general investigations
6 I worked out of the State Police in Somers and the State
7 Police in Somers has investigative jurisdiction over that
8 town.

9 Q. Now when you conducted the search were there other
10 law enforcement -- other members of law enforcement there
11 as well?

12 A. Yes.

13 Q. What organization were they from?

14 A. From the town of Pound Ridge Police Department and
15 the State Police as well.

16 Q. And did different officers have different
17 responsibilities during the search?

18 A. Yes, they did.

19 Q. Did you have a particular focus with respect to the
20 search?

21 A. Yes.

22 Q. What was your focus?

23 A. My focus was the identifying and securing the digital
24 evidence at the residence.

25 Q. And was there anyone else at the search working with

Mr. Fearon - Direct - Mr. Spector

1 you for that?

2 A. Yes, there was.

3 Q. Who was that?

4 A. One of this investigators assigned to my unit,
5 Investigator Michael Prunty.

6 Q. Can you describe what happened when you first arrived
7 at the defendant's home for the search?

8 A. Once the -- once we went to the house someone knocked
9 on the door and there was an initial time where the house
10 had to be secured where it had to -- where there was an
11 initial sweep done on the house. That's essentially just
12 to make sure that the house is safely secure, that there
13 isn't anyone hiding in a closet some place or hiding
14 under a bed.

15 THE COURT: Is there any reason why we can't
16 get to what he found?

17 MR. SPECTOR: I'll get to it as quickly as
18 possible, Judge. I'll move along.

19 Q. Other than law enforcement authorities was there
20 anyone else present during the search?

21 A. A person that we were able to find out was Mr.
22 Yannai, and there were also to other women at the house.

23 Q. Was the defendant's wife present?

24 A. No.

25 Q. So after the house was secured what did you do?

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1 A. After the house was secured myself and Investigator
2 Prunty went through the process of identifying digital
3 evidence that was located in the house, and once those
4 items were identified we had to catalog them, take
5 pictures of them, and to secure them as evidence.

6 We would -- we had to take photos of the general area
7 in the house, and if there was a computer or some sort of
8 digital evidence located we would -- we would photograph
9 where it was, photograph the general area around the
10 computer, and note any connections of that computer to
11 things such as a router or a cable modem. We would take
12 pictures of those and note those. And once we've noted
13 the computers that were there we would actually -- we
14 would disconnect them, secure them, and prepare them for
15 transport.

16 Q. And can you describe what you found in the house?

17 A. In the house we found there were eight computers and
18 one laptop computer.

19 Q. And where were the computers located?

20 A. There were four computers that were up and running.
21 In the basement of the house there is -- there was an
22 office area, and just to the right of the office area
23 outside the office area there were some computers that
24 were located there. There were four computers that were
25 basically in a line. Two computers that were inside the

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1 office area and two computers outside. Those computers
2 were running. In a closet area nearby the boiler area
3 there were four other computers that weren't connected or
4 up and running.

5 MR. SPECTOR: If I can just show the witness
6 what's been marked as 6C.

7 Q. Do you recognize that photo?

8 A. Yes, I do.

9 Q. What is it?

10 A. This is a picture of the office area looking into the
11 office area. There's a glass door that separates the
12 office from the basement. As you can see there are two
13 stations where computers were located inside the office
14 area, and coming outside of the office there are two more
15 stations located there.

16 Q. And showing 6D. What is that?

17 A. Okay. This is another picture of the office looking
18 out towards the sliding glass doors. If you looked out
19 those sliding glass doors --

20 MR. SPECTOR: I'm sorry, Judge, can I just
21 offer 6C and 6D into evidence.

22 THE COURT: Absolutely.

23 MR. SCHNEIDER: No objection.

24 (Government's Exhibit No. 6-C and 6-D received in
25 evidence.)

Mr. Fearon - Direct - Mr. Spector

1 MR. SPECTOR: Publish, please.

2 THE COURT: I don't think so. Let's go. Next
3 question. If you're interested ladies and gentlemen when
4 you're deliberating you can see whatever has been offered
5 into evidence, but I think we've seen enough pictures of
6 the house.

7 Q. After you located and secured the computers what Did
8 you do with them?

9 A. Once they were identified they were prepared to
10 transport to the State Police in Somers.

11 Q. Now you said you found nine computers; is that right?

12 A. Yes.

13 Q. And they were eight hard drives and a laptop?

14 A. Eight desk top computers and one laptop computer.

15 Q. Did your team conduct an analyze of the laptop?

16 A. No, we did not.

17 Q. Why was that?

18 A. During the investigation we found out that the eight
19 computers -- the eight desk top computers were the
20 computers that belonged to Mr. Yannai, the laptop did not
21 belong to him so we didn't review that computer.

22 Q. Who did the laptop belong to?

23 A. It belonged to one of the women that were in the
24 house at the time.

25 Q. Now the eight computers you did review -- excuse me -

Mr. Fearon - Direct - Mr. Spector

1 - were copies of those eight hard drives provided to
2 defense counsel in this case?

3 A. Yes, they were.

4 Q. Can you just briefly describe the analysis that you
5 conducted on the eight computers? That was conducted on
6 the eight computers.

7 A. Uh-huh. Basically the -- when the computers are --

8 THE COURT: What did you find? You're going to
9 have to go --

10 MR. SPECTOR: All right, Judge, I'll move
11 ahead. I'm sorry, I'll skip ahead.

12 Q. Which computer did you analyze?

13 A. I analyzed item number one.

14 Q. What types of documents and information did you find
15 on the computer?

16 A. On the computer there were documents --

17 THE COURT: Ask him about specific documents
18 that he found.

19 MR. SPECTOR: Okay.

20 Q. Did you find one e-mail account or more than one
21 e-mail account on the computer?

22 A. Found more than one e-mail account on the computer.

23 Q. And what type of e-mail service did the computer use?

24 A. There was -- it was AOL, America Online.

25 Q. And how many active e-mail accounts did you find on

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1 the computer?

2 A. Six.

3 Q. What were the names of those six accounts?

4 A. There was jyasstrjoannak, danielben222,
5 publishersplus, Elena Fusillo, and Joseph Yannai.

6 Q. Now in addition to active accounts did you find any
7 inactivity accounts -- e-mail accounts on the computer?

8 A. Yes, there were inactive accounts.

9 Q. Do you remember the names of any of those?

10 A. The other inactive accounts I located there was a
11 danielben101 and instylecompanies.

12 MR. SPECTOR: I'm going show the witness what's
13 been marked as Government's Exhibit 15.

14 Q. The first page of that exhibit, what is that
15 document?

16 A. This is a printout of a file that was located in the
17 my documents location under Joseph Yannai's account.

18 Q. And showing the second page of Government's Exhibit
19 15, what is that document?

20 A. That's the document that was also in the my documents
21 location of Joseph Yannai's account for a questionnaire.

22 MR. SPECTOR: Government offers 15.

23 MR. SCHNEIDER: No objection.

24 THE COURT: It's admitted.

25 (Government's Exhibit No. 15 received in evidence.)

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1 MR. SPECTOR: May I publish?

2 Q. If you can just read aloud the dear in the first
3 paragraph, please.

4 A. Okay. "Dear XXX." Should I continue?

5 Q. Please, just the first paragraph.

6 A. First paragraph. "We are in the process of writing a
7 book about au pair world. The book will provide young
8 ladies who wish to become an au pair and those families
9 who are considering an au pair for their homes an
10 introduction to each other thereby helping each to better
11 relate and make the experience more enjoyable and
12 constructive."

13 Q. And focusing on the bottom, what's the signature line
14 there?

15 A. It says, "Warmest regards, Daniel Ben, Associated
16 Editor."

17 Q. If I can show you the second page of Government's
18 Exhibit 15. What is that document?

19 A. This is the -- this is the au pair questionnaire.

20 Q. And how many -- there are a number of questions
21 listed here. Do you remember approximately how many
22 questions there are?

23 A. There were approximately 140 questions. I think
24 altogether I think it was 144.

25 MR. SPECTOR: May I approach, your Honor?

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1 THE COURT: Uh-huh.

2 MR. SPECTOR: I'm showing the witness what's
3 been marked as Government's Exhibit 4.

4 Q. What is that document?

5 A. This is a spreadsheet that was located in the my
6 documents located under the Joseph Yannai account.

7 MR. SPECTOR: Government offers Exhibit 4.

8 MR. SCHNEIDER: We have a previous objection.

9 THE COURT: Overruled. It's admitted.
10 (Government's Exhibit No. 4 received in evidence.)

11 Q. If you could just lift that up to show to the jury,
12 please. You can turn it sideways. Thanks. Publish a
13 copy of it for the jury, first page.

14 THE CLERK: Repeat that counsel.

15 MR. SPECTOR: If I could just publish a copy of
16 Exhibit 4 to the jury, the first page of Exhibit 4.

17 Q. Investigator Fearon, how many categories are there on
18 this spreadsheet?

19 A. On the spread Sheet itself it actually extends out
20 for quite a while. There are approximately 100 -- at
21 least 140 separate categories.

22 Q. And does each category on the spreadsheet correspond
23 with a specific question from Government Exhibit 15?

24 A. Yes.

25 Q. If we can just quickly go through a couple examples.

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1 Question -- can you just read aloud questions 14, please.

2 A. Uh-huh.

3 Q. On the scream.

4 A. Uh-huh. "Are your parents alive? Mother, yes, no.
5 Father, yes, no."

6 Q. And then showing the spreadsheet. The highlighted
7 column there, what does that say?

8 A. It says, "Parents," and the number 014, and the
9 entries are either B, M.

10 Q. And if I can show you question 64. If you can read
11 that aloud, please.

12 A. "Did you consult with family members/friends, as to
13 which of the families who approached you you should
14 choose? If yes, with whom?"

15 Q. And showing you another page of the spreadsheet.
16 Just read aloud the highlighted portion and describe that
17 area.

18 A. It says, "Consult," and the number 64, and then the
19 entries, they are -- there are various other -- various
20 entries based on responses.

21 Q. And just showing you the last group here. If you can
22 read the three highlighted questions there, please.

23 A. Uh-huh. There's number 114, "Were you able to
24 contact your friends in the country you came from?" 115
25 is, "Did you have access to the internet? If yes, how

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1 often and under what circumstances?" 116 is, "Did you
2 make friends among the other au pairs in your area?"

3 Q. And if I can just show you another page of the
4 spreadsheet. Just read those highlighted portions and
5 describe the columns.

6 A. Uh-huh. The first one is, friends contact, and it
7 says, "114," and there's a yes or no. Internet is 115
8 and an A, it says -- there are answers for yes or no.
9 And internet circumstances is 115B, and there are entries
10 underneath.

11 Q. And then just one final question on the
12 questionnaires. 119, can you read that aloud, please.

13 A. Uh-huh. "Did you have a local boyfriend? If yes,
14 how did the host family react to him?"

15 Q. Showing you again the spreadsheet.

16 A. Uh-huh. And the heading it says, "boyfriend, 119,"
17 and there are yes or no answers.

18 Q. Now when you reviewed the defendant's computer did
19 you find a number of e-mails on the hard drive?

20 A. Yes.

21 MR. SPECTOR: If I can show the witness what's
22 been marked as 12B.

23 Q. Was that one of the e-mails you found on the
24 defendant's computer?

25 A. Yes.

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1 MR. SPECTOR: Offer 12B.

2 MR. SCHNEIDER: No objection.

3 THE COURT: It's admitted.

4 (Government's Exhibit No. 12-B received in evidence.)

5 MR. SPECTOR: Publish, please.

6 Q. If you can just read aloud just this portion, please.

7 A. "Dear Detty, while it was good news from Joseph I did
8 not understand and he did not explain to me what was the
9 permit that you got, so I will ignore it and try to help
10 you as if there is no permit, whatever it is.

11 You have to go to the internet to the America embassy
12 website and fill up a form. Do it from a computer that
13 is attached to a printer because you would have to print
14 their approval. They will ask you different questions.

15 The answers that I can help you with is Joseph's
16 address which is 309 Salem Road, Pound Ridge, NY 10576.
17 That where you are were going to stay. If they ask in
18 the form or when you come to JFK what you are coming for
19 is that you come as a tourist to visit the country.
20 Joseph and Elena are friends of the family. It is better
21 that they will be friends for your parents because of the
22 age and they invited their friend's daughter, you, to
23 come and visit the U.S. They will take you touring
24 around and you will stay with them and all your expenses
25 will be on them."

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1 Q. Just focusing on the bottom there. Who signed that?

2 A. Joanna.

3 MR. SPECTOR: I'm showing the witness what's
4 been marked as Government Exhibit 8, a two-page document.

5 Q. Do you recognize both pages of that document?

6 A. Yes.

7 Q. Where did you find that document?

8 A. Those documents were located in the "my documents"
9 folder of the Joseph Yannai account.

10 MR. SPECTOR: Government offers Exhibit 8.

11 MR. SCHNEIDER: No objection.

12 THE COURT: Admitted.

13 (Government's Exhibit No. 8 received in evidence.)

14 MR. SPECTOR: If I can publish starting with
15 the first page. Can you just read aloud the first couple
16 lines, please.

17 THE WITNESS: Uh-huh. "Dear XXX, thank you for
18 your letter. Maybe I should describe to you a little of
19 my experience with Joseph, the boss, the work and the
20 terms and you will be able to deduct from it. The secret
21 of" --

22 Q. That's fine.

23 A. Okay.

24 Q. That's fine. If you can just read just the first
25 couple lines starting there.

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1 A. "As to the pay you will have two options to choose
2 from and you will have to choose before you come. One is
3 the live-out option in which case you will be paid \$2,000
4 a month, his business pays monthly, but all the expenses
5 but the food you eat when you at their home and all the
6 expenses when you travel with Joseph are on you."

7 Q. That's fine. If I can show you the next page of
8 Government Exhibit 8.

9 MR. SPECTOR: If I can publish to the jury,
10 please.

11 Q. If you can read the first two paragraphs, please.

12 A. "Dear XXX, we are not looking for an au pair as an au
13 pair is for children. We are looking for an assistant to
14 my previous boss. For more than two years I had the same
15 job I am offering you now who is far away from being a
16 child, he is 64 years old. The boss is a businessman who
17 operates from home. He has several businesses, but
18 concentrates mainly in book publishing in the hospitality
19 industry, travel, hotels, and restaurants. He is
20 completely independent, not disabled."

21 THE COURT: Stop, we've heard this before.

22 MR. SPECTOR: Thank you, Judge.

23 THE COURT: You know, ladies and gentlemen,
24 there was a time we didn't have all this fancy equipment.
25 We'd be here for five minutes, they would say did you

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1 find these documents and that would be the end of it.

2 Now we have to go through using this fancy equipment.

3 MR. SPECTOR: Thank you, Judge, I'll move
4 along.

5 Q. Who's the signature line there?

6 A. Joanna Kulik.

7 MR. SPECTOR: If I can show the witness what's
8 marked as 7A.

9 Q. Did you find this document -- what is this document?

10 A. This is an e-mail that was secured from one of the
11 accounts on the -- one of the active accounts on the
12 computer.

13 MR. SPECTOR: Government offers 7-A.

14 MR. SCHNEIDER: I have an objection.

15 THE COURT: I don't know what 7-A is. Can I
16 see it? Just let him give it to me. What is the -- do
17 you want to come up and tell me what the objection is?

18 MR. SCHNEIDER: Sure.
19
20
21
22
23
24
25

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1 (Conference held at sidebar.)

2 MR. SCHNEIDER: This isn't the only one of
3 these that the government is offering. I don't think
4 that's the Vanessa who testified, I think it's a
5 different Vanessa.

6 THE COURT: So what?

7 MR. SCHNEIDER: I just think it's irrelevant --

8 THE COURT: But it's irrelevant. I don't
9 understand.

10 MR. SCHNEIDER: Because --

11 THE COURT: The indictment says between
12 approximately 2003 and 2009 that Yannai engaged in a
13 scheme using lies, intimidation, manipulation to induce
14 young women mostly between the ages of 18 and 25 to
15 travel to the United States from aboard so that he could
16 sexually abuse them, and then it goes through. I don't
17 understand. This is like, you know, somebody is charged
18 with five bank robberies and they find evidence that
19 there was ten. You could exclude the other five because
20 it shows propensity?

21 MR. SCHNEIDER: Well, if they didn't charge it,
22 yeah.

23 THE COURT: It's part of the scheme for heavens
24 sakes, this is all proof.

25 MR. SCHNEIDER: They -- the government --

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1 THE COURT: Your objection is overruled.

2 (Conference ended at sidebar.)

3 MR. SPECTOR: Government offers 7-A.

4 THE COURT: It's admitted.

5 (Government's Exhibit No. 7-A received in evidence.)

6 MR. SPECTOR: May I publish?

7 Q. Investigator Fearon, is this e-mail -- the text of
8 this e-mail identical to the form letter you just read a
9 moment ago?

10 A. Yes, it is, with the exception of the age of the
11 person, it's changed from 64, I believe, to 63.

12 Q. Okay. With that exception?

13 A. I believe so.

14 Q. Did you do a search on the defendant's computer to
15 find other e-mails identical to this one?

16 A. Yes, I did.

17 Q. Can you explain how it is you conducted that search?

18 A. I took a small -- I took a small piece of that -- of
19 this message, took the first sentence, and I used -- I
20 conducted a search to look through the AOL e-mail
21 accounts looking for that actual piece of a sentence, and
22 I was able to find -- I was able to find multiple copies
23 of this message.

24 Q. And how many copies of this message did you find on
25 the defendant's computer?

Mr. Fearon - Direct - Mr. Spector

1 MR. SCHNEIDER: Objection.

2 THE COURT: Overruled.

3 Q. How many copies of this message did you find on the
4 defendant's computer?

5 A. It was at least 1500.

6 Q. Just one more document I'd like to show you, sir.

7 MR. SPECTOR: Showing the witness what's been
8 marked as Government Exhibit 13.

9 Q. Do you recognize this document?

10 A. Yes, I do.

11 Q. Did you find -- is it an e-mail?

12 A. It is an e-mail.

13 Q. Did you find it on the defendant's computer?

14 A. Yes, I did.

15 MR. SPECTOR: Government offers 13.

16 MR. SCHNEIDER: Objection.

17 THE COURT: I don't know what 13 is.

18 MR. SCHNEIDER: It should be on the screen.

19 THE COURT: Is this the same -- it's the same
20 that we considered?

21 MR. SCHNEIDER: No, it's not.

22 THE CLERK: Side bar, counsel.

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Mr. Fearon - Direct - Mr. Spector

1 (Conference held at sidebar.)

2 MR. SCHNEIDER: This is an e-mail from the au
3 pair world website to -- this is an e-mail from the au
4 pair world website --

5 THE COURT: Right.

6 MR. SCHNEIDER: -- to who they thought was
7 Joanna Kulik saying you violated the terms of our service
8 by sending this e-mail.

9 MR. SPECTOR: Judge, there are two reasons
10 we're offering this.

11 First of all, this e-mail is one of the few, I
12 think as far as we're concerned, the only document which
13 makes clear in the same document he's posing as both
14 Sylvia and Joanna. It starts actually addressed to
15 Sylvia, and there is a correspondence with the au pair
16 website, and at the end they send him examples of the
17 message he sent as Joanna. That's the first reason we're
18 offering it.

19 The second reason is because it corroborates
20 Anne Simonsen who testified that when she went home she
21 told the au pair website that -- or told an au pair
22 website that he was misusing the au pair website, and
23 they kicked him off. I don't believe this is the same au
24 pair website, but it's nonetheless important
25 corroboration.

Mr. Fearon - Direct - Mr. Spector

1 THE COURT: This doesn't -- this is? 2009.

2 Did she --

3 MR. SPECTOR: It's not the same. It's not the
4 same time period. The reason it's important
5 corroboration is because we think the defense is likely
6 to argue that the victims came back to their home
7 countries and they did nothing.

8 THE COURT: I know, but how does this prove
9 that they did anything?

10 MR. SPECTOR: Well, it corroborates her
11 testimony that she said she contacted the au pair website
12 and they kicked him off.

13 THE COURT: What year did she do this?

14 MR. SPECTOR: Several years ago. It's not this
15 same website, but it corroborates her -- because it shows
16 that that's how the au pair website reacts when you
17 contact them and you tell them he's misusing the terms of
18 service. So there's two independent reasons why it
19 should be admitted.

20 MR. SCHNEIDER: But I don't understand how a
21 completely separate message from an au pair website
22 saying you sent spam to our participants corroborates
23 something someone called about to a different site three
24 years before.

25 MR. SPECTOR: It's not spam, it specifically

Mr. Fearon - Direct - Mr. Spector

1 says that he's misusing it because he doesn't have
2 children. If you look at the end -- if I may, Your
3 Honor.

4 MR. SCHNEIDER: As well as sending spam
5 e-mails.

6 MR. SPECTOR: If you look at the first message
7 to Sylvia. "Several au pairs have informed us that you
8 are not looking for an au pair for your children, for
9 this reason you can no longer use our site for your
10 search."

11 MR. SCHNEIDER: Well, that's clearly just
12 hearsay.

13 MR. SPECTOR: It's not being offered for the
14 truth, it's being offered for corroboration of the
15 summonses.

16 MR. SCHNEIDER: It's not for truthful
17 corroboration.

18 MR. SPECTOR: Also it's part of a conversation
19 with the defendant.

20 THE COURT: I don't understand what you're
21 talking about. First of all let's get back to the first
22 reason that you told me.

23 MR. SPECTOR: The first reason is this shows
24 that the defendant is using both the Sylvia identity and
25 the Joanna identity.

Mr. Fearon - Direct - Mr. Spector

1 THE COURT: Is there any issue in the case
2 about that.

3 MR. SCHNEIDER: Respectfully --

4 THE COURT: Did I miss anything?

5 MR. SPECTOR: We have an obligation to prove
6 that, whether or not the defense now claims it's in
7 dispute.

8 MR. SCHNEIDER: I don't think it's in dispute,
9 I think that this witness is going to testify that he
10 found e-mails from Sylvia and Joanna on that computer.

11 MR. SPECTOR: Judge, there's a fraud charge
12 here in the indictment, and we --

13 MR. SCHNEIDER: Wait, am I wrong about that?
14 He is going to testify that he found e-mails from Joanna
15 and Sylvia on that computer?

16 MR. SPECTOR: Judge, we're --

17 THE COURT: Will you answer his question?

18 MR. SPECTOR: Yes.

19 THE COURT: Okay. So I don't -- it's not
20 necessary for that purpose. What else?

21 MR. SPECTOR: The other purpose is are the ones
22 that I've articulated, it's also the defendant's
23 statements. This is a correspondence --

24 THE COURT: There's no -- I'm not, I'm not
25 admitting. So let's move on.

Mr. Fearon - Direct - Mr. Spector

MR. SPECTOR: Thank you, Judge.

(Conference concludes at sidebar.)

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Mr. Fearon - Cross - Mr. Schneider

1 Q. Sir, in your search of the e-mails of the defendant's
2 computer did you also find e-mails written or signed in
3 the name Sylvia?

4 A. Yes, I did.

5 MR. SPECTOR: Nothing further.

6 CROSS-EXAMINATION

7 BY MR. SCHNEIDER:

8 Q. You did a search for that -- I forget the number now
9 -- but that form e-mail, correct?

10 THE COURT: Hold on, give me the indictment
11 back.

12 Q. Sir, you performed a search for one of the
13 government's exhibits which was a form e-mail on the
14 computer. Do you recall that?

15 A. Yes, I do.

16 Q. And you said you found at least 1500 e-mails
17 containing those same words?

18 A. Yes.

19 Q. Each of those e-mails had been sent I assume?

20 A. I wouldn't be able to establish that from the search.

21 Q. But did each of those e-mails have an e-mail address
22 in the "to" line?

23 A. Yes.

24 Q. So each of those e-mails was addressed to a
25 particular e-mail address?

Mr. Fearon - Cross - Mr. Schneider

1 A. As far as I was able to determine, yes.

2 Q. Your search of the computers, you were able to
3 determine -- you could search the documents on the
4 computer and determine for instance if an e-mail had been
5 composed on that computer, correct? Composed and saved?

6 Well, let me step back. Somebody goes to a computer,
7 they type an e-mail, they address it to somebody and they
8 send it. You follow me?

9 A. So far, yes.

10 Q. Would that -- would a copy of that message be saved
11 on the computer?

12 A. It depends on the software that was used, it depends
13 on the program, depends on -- it depends on how that
14 program was actually set up and configured.

15 Q. In this -- the computer that we're talking about
16 where you found these e-mails, do you believe that's how
17 they came to be on the hard drive of that computer?

18 A. I don't know if I can -- I don't know if I can say
19 that for every e-mail. I mean the search was just that.
20 I searched based on a term and then I was able to find --
21 I was able to find remnants of e-mails.

22 Q. All right. But you don't know -- you can't say for
23 certain whether they had been sent or not?

24 A. No.

25 Q. And you said -- I believe you just testified that

Mr. Fearon - Redirect - Mr. Spector

1 it's not necessarily that an e-mail program will save a
2 copy of the e-mail on the computer, correct?

3 A. It depends on the e-mail program. If I -- most of
4 the -- the information that was located will have a date
5 and a time stamp whether the e-mail was sent, so then
6 you'd be able to deduce what time the e-mail was sent, if
7 it was.

8 Q. Do you have any knowledge of AOL's e-mail accounts?
9 Let me ask you this. Do you know if AOL has an internet
10 e-mail program?

11 A. Yes.

12 Q. Do they?

13 A. Yes.

14 Q. And does that mean that if somebody has an AOL
15 internet account and they're away from home and don't
16 have their computer that they can go to an internet café
17 and log on to their account?

18 A. Yes.

19 Q. And they can send an e-mail from that account?

20 A. Yes.

21 MR. SCHNEIDER: No further questions.

22 REDIRECT EXAMINATION

23 BY MR. SPECTOR:

24 Q. If someone had remotely logged onto the defendant's
25 AOL account somewhere else and sent an e-mail from

Mr. Fearon - Redirect - Mr. Spector

1 somewhere else would that e-mail appear on the
2 defendant's computer, the hard drive?

3 A. If it was sent I don't believe so.

4 MR. SPECTOR: Nothing further.

5 MR. SCHNEIDER: No further questions.

6 THE COURT: All right. Now you want to come up
7 for a minute?

8 MR. SPECTOR: Oh, I'm sorry, Judge, can we
9 excuse the witness?

10 THE COURT: Yes.

11 (Witness excused.)
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Proceedings

1 (Conference held at sidebar.)

2 THE COURT: Okay. This instruction, you want
3 me to give this now? I'm not --

4 MR. SCHNEIDER: Yes.

5 THE COURT: When I say this instruction I'm
6 referring to the May 25th, 2011 letter that was sent to
7 me.

8 MR. SCHNEIDER: Yes.

9 THE COURT: Sent ECF. This is not true. The
10 government exhibits were introduced that some of them
11 weren't, "the witnesses may have performed in their
12 home." That's simply not true. They are alleging the
13 scheme, I told you that.

14 MR. SCHNEIDER: They are alleging a scheme, but
15 that's --

16 THE COURT: A scheme, and this is proof. This
17 is evidence that the jury could conclude as part of that
18 scheme.

19 MR. SCHNEIDER: Our position --

20 THE COURT: You know, I may have misspoken when
21 I talked about bank robberies, but if there's a scheme or
22 a conspiracy to commit bank robberies, evidence -- for
23 example, just -- it's not directly pertinent -- but if
24 you had ten other banks in which he examined for the
25 purpose of, you know, determining where the windows are,

Proceedings

1 the cars -- where the getaway cars could be parked, it
2 would be admissible.

3 I'm ready to give this charge with this -- you
4 may consider the evidence to the extent that you think it
5 is relevant to the specific charge contained in the
6 indictment. You may not consider it as proof that the
7 defendant has a (indiscernible) personality or bad
8 character.

9 MR. SPECTOR: That's fine for the government.

10 THE COURT: If that's what you want I'll give
11 it.

12 MR. SCHNEIDER: No we, we don't want any
13 limiting instruction then. To make my point clear, the
14 government has added surplus language to the indictment.
15 You won't be charging this jury about a scheme. There's
16 five counts now of Mann Act violations --

17 THE COURT: I understand that. You want them,
18 how many -- you know, I don't think they have to charge
19 every single count to just -- to get in evidence that he
20 had a scheme.

21 MR. SCHNEIDER: But a scheme is -- I understand
22 your ruling. It's our position a scheme is not an
23 element of this crime, there's no reason they have to
24 prove a scheme. They have to prove that he did this to
25 one or all of these five women, that's the proof. If

Proceedings

1 they put a scheme in the indictment is what they did, but
2 they don't have to prove it.

3 THE COURT: No, there's something -- look,
4 there's called part of a common scheme and plan.

5 MR. SCHNEIDER: Yes.

6 THE COURT: Okay. And that's an exception,
7 although it doesn't necessarily have to fit exactly, but
8 that's an exception. This is part of -- he had a -- one
9 of the reasons I didn't -- I thought that some of the
10 questions about how many other women were living in the
11 house was -- it was not helpful to you because I thought
12 it, A, it sort of supported it, and B, it just showed,
13 you know, bizarre nature of what was going on in that
14 house. But that's beside the point, this is part of the
15 scheme. I mean the fact that he didn't -- I'm willing to
16 say give the part of the charge that says --

17 MR. SCHNEIDER: No, we would like the first
18 part of the charge.

19 THE COURT: The defendant is not charged with
20 attempt, inducing or attempting to induce any of the
21 women to come to his home.

22 MS. CESARE: Yes.

23 THE COURT: I'll give that charge.

24 MR. SCHNEIDER: Yes, we want that charge.

25 THE COURT: I'm not going to give a false

Proceedings

1 statement as to why they were introduced.

2 MR. SCHNEIDER: Judge, they're going to rest
3 now, we have one short witness. Should we just go
4 straight into it and then --

5 THE COURT: What is it and how short is it?

6 MR. SCHNEIDER: Three minutes of direct at the
7 most.

8 MR. SPECTOR: Judge, we -- Judge, yeah, I mean
9 we have an objection to this witness.

10 THE COURT: What is --

11 MR. SPECTOR: As I understand it --

12 THE COURT: What type of witness is this?

13 MR. SCHNEIDER: When I questioned Ms. Yagoub
14 she testified that Mr. Silverman and one of our
15 paralegals interviewed in a hotel room.

16 The two things we want to bring out which we
17 think impeach her is she said they didn't identify
18 themselves. She'll testify that she said she was from
19 the federal defenders, that she gave her a business card
20 at the very first instance she met her, and she also said
21 that she believed she discussed with them Mr. Yannai
22 putting his hands down her pants at the lake. She'll
23 testify that when she questioned her about the lake she
24 said that he grabbed her breast and tried to kiss her and
25 she pushed him away.

Proceedings

1 MR. SPECTOR: As to the second point it's not
2 proper impeachment. The witness testified when asked
3 what she told the investigator at the Marriott Hotel she
4 said, I don't remember. As to the issue of whether the
5 federal defenders identified themselves, entirely
6 collateral. So it should not be allowed.

7 MR. SCHNEIDER: Well, I wouldn't call her
8 except that --

9 THE COURT: You can call her.

10 MR. SCHNEIDER: Okay.

11 (Conference ended at sidebar.)

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Ms. York - Direct - Mr. Silverman

1 MR. SPECTOR: The government rests.

2 THE COURT: Ladies and gentlemen, the
3 government introduced evidence that Mr. Yannai sent and
4 received questionnaires from women who were au pairs or
5 looking to become au pairs, the defendant is not charged
6 with inducing or attempting to induce any of those women
7 to come to his home. The charges here are limited to the
8 discrete instances as to which you heard evidence. Let's
9 go.

10 THE COURT: Your rule 29 motion is deemed made
11 and denied.

12 MR. SCHNEIDER: I'll renew it after this.

13 THE COURT: Okay.

14 **C A I T I L I N Y O R K**

15 **having been first duly sworn, was examined and**
16 **testified as follows:**

17 THE CLERK: State your name for the record.

18 THE WITNESS: Caitilin York.

19 DIRECT EXAMINATION

20 BY MR. SILVERMAN:

21 Q. Hi. And where do you work?

22 A. I work at the Federal Defenders of New York.

23 Q. And where did you go to school?

24 A. Yale University.

25 Q. And when did you graduate?

Ms. York - Direct - Mr. Silverman

1 A. Last year, in 2010.

2 Q. And what is your current position?

3 A. I'm a paralegal.

4 Q. And have you worked on the investigation of Joseph
5 Yannai in this case?

6 A. Yes.

7 Q. And did you go to the Marriott Hotel a few blocks
8 from here last week?

9 A. I did.

10 Q. And was I with you?

11 A. Yes.

12 Q. And what happened?

13 A. I entered the Marriott lobby with you.

14 THE COURT: We don't need the whole trip up the
15 elevator, the knock on the door. Let's get to --

16 THE WITNESS: All right.

17 Q. We used my cell phone to call reception. I asked to
18 speak with Nathalie Yagoub. I was transferred to her
19 room. Ms. Yagoub answered. I said -- I introduced
20 myself, said I was calling -- I was in the lobby with Ben
21 Silverman, we were calling from the Federal Defenders.
22 And we asked her if she'd talk to us if we could come up
23 to her room or if she'd be more comfortable if we came to
24 the lobby. She told us she was getting dressed. She had
25 just woken up and she would come down.

Ms. York - Cross - Ms. Jager

1 Ms. Yagoub came down the elevator. We introduced
2 ourselves again, asked her if she wanted to talk in the
3 lounge. We walked to the lounge with her, had a seat. I
4 gave her my business card. You didn't have your business
5 card, so you wrote your name and phone number on the back
6 of my card and we began to ask her questions about her
7 experience.

8 Q. Was she asked specifically about going to the lake
9 with Mr. Yannai?

10 A. She was not asked specifically about that. She
11 brought it up in reference to something else and she told
12 us about that day.

13 Q. What did she say?

14 A. She told us that at the lake, Mr. Yannai kissed her
15 and touched her breasts. That she did not want him to do
16 that. She asked him to stop. He was persistent. When
17 we asked her what that meant, she said that, although he
18 stopped touching her, he tried to convince her verbally
19 to let him continue.

20 Q. Did she say that Mr. Yannai put his hand in her
21 pants?

22 A. No.

23 Q. No further questions.

24 CROSS-EXAMINATION

25 BY MS. JAGER:

Ms. York - Cross - Ms. Jager

- 1 Q. Good afternoon, Ms. York.
- 2 A. Good afternoon.
- 3 Q. Now you testified you interviewed Ms. Nathalie
- 4 Yagoub; correct?
- 5 A. Yes.
- 6 Q. And that took place May 18, 2011?
- 7 A. I believe so; yes.
- 8 Q. And you're a paralegal with the Federal Defenders;
- 9 right?
- 10 A. I am.
- 11 Q. You're not a criminal investigator; are you?
- 12 A. No, ma'am.
- 13 Q. And you were with an attorney from the Federal
- 14 Defenders office named Ben Silverman; correct?
- 15 A. Yes.
- 16 Q. The same attorney who just questioned you?
- 17 A. Yes.
- 18 Q. And it took place at the Marriott Hotel in Brooklyn;
- 19 right?
- 20 A. That's right.
- 21 Q. Now when you went to interview Ms. Yagoub, you didn't
- 22 have an appointment with her; did you?
- 23 A. We did not.
- 24 Q. And, in fact, you only knew she was staying there
- 25 because that's where the government typically lodges its

Ms. York - Cross - Ms. Jager

1 witnesses for trial.

2 A. That's right. We assumed.

3 Q. And when you arrived at the Marriott, isn't it true
4 that you called her hotel room from the lobby?

5 A. Yes, using my cell phone.

6 Q. Excuse me. And you told her you were downstairs in
7 the lobby at that moment; right?

8 A. I did; yes.

9 Q. And you asked her if you could go up to her hotel
10 room; right?

11 THE COURT: Why are we repeating all of this?

12 MS. JAGER: I'll move ahead, your Honor.

13 Q. Isn't it true that Ms. Yagoub had never met you
14 before?

15 A. That is true.

16 Q. And she had never met Mr. Silverman before?

17 A. I don't believe they'd met before; no.

18 Q. And when she declined to permit you to come to her
19 room, she did agree to come to the lobby.

20 A. Yes.

21 Q. Isn't it true that when she came down to meet you,
22 she said she was surprised to see you?

23 A. I don't recall that.

24 Q. Isn't it true that she said she didn't have a meeting
25 planned with the government that day?

Ms. York - Cross - Ms. Jager

1 A. I don't know. She hadn't expected my phone call
2 certainly.

3 Q. In fact, she told you that she had met with the
4 government the day before; right?

5 A. She did tell us that; yes.

6 Q. Now isn't it true that you introduced yourselves when
7 Ms. Yagoub came downstairs by giving her your business
8 card?

9 A. That is true.

10 Q. And you showed her your Federal Defenders I.D.?

11 A. I had my I.D. in my hand, as did Ben Silverman.

12 Q. And do you have that badge with you now?

13 A. Yeah, it's in my bag back there.

14 MS. JAGER: Would it be possible, your Honor,
15 for the witness to show it to the jury?

16 THE COURT: I don't know -- why?

17 MS. JAGER: Just to show what it looks like.

18 THE COURT: I don't see the relevance of this.

19 MS. JAGER: Okay, I'll move ahead.

20 Q. You told her you with the Federal Defenders; right?

21 A. Yes.

22 Q. You didn't tell her that you represented the
23 defendant Joseph Yannai; did you?

24 A. Not when we first introduced ourselves, no.

25 Q. Isn't it true that you and Ben Silverman proceeded to

Ms. York - Cross - Ms. Jager

1 interview Ms. Yagoub for a significant period of time?

2 A. Yes.

3 Q. In fact, you wrote a six-page single spaced memo
4 summarizing that interview; right?

5 A. I did.

6 Q. And you took about fifteen pages of handwritten
7 notes; is that right?

8 A. I don't know how long my handwritten notes but yeah.

9 Q. Let me show you --

10 THE COURT: We don't -- how many pages is it?
11 Is it --

12 MS. JAGER: It's fifteen pages.

13 THE WITNESS: That sounds right. It was long.

14 Q. And you talked to her for how long, about thirty
15 minutes, forty-five minutes, sixty minutes?

16 A. Probably about an hour.

17 Q. Ms. Yagoub at some point talked about what happened
18 at the lake; correct?

19 A. She did.

20 Q. And isn't it true that she said that the defendant
21 had, in fact, kissed her at the lake?

22 A. Yes.

23 Q. And --

24 THE COURT: Why do you have to go over what has
25 already been elicited that she said? I don't understand.

Ms. York - Cross - Ms. Jager

1 MS. JAGER: Because I am --

2 THE COURT: Can you just get to this point of
3 your cross-examination?

4 MS. JAGER: Yes, your Honor.

5 Q. And Ms. Yagoub told you that she told the defendant
6 to stop and at first he continued; right?

7 A. She told us that she wanted him to stop and that he
8 stopped touching her.

9 Q. Well, isn't it true she told you -- "I told him -- at
10 the lake he wanted to kiss me. He put his hands to my
11 breasts. I told him I don't want to do that and he
12 resisted but then he stopped."

13 A. Yeah, and then I believe we clarified and asked her
14 what she meant by resisted, whether that was physical or
15 verbal and she told us he verbally protested and tried to
16 convinced her.

17 Q. But isn't it true that when she answered that
18 question, she didn't answer specific to that account --
19 to that particular time, she said "When I would ask him
20 to stop, he would try to convince me."

21 A. That's true. She was saying generally when she tried
22 to -- when he would try to convince her, it was verbally
23 rather than physically; yes.

24 Q. Didn't Ms. Yagoub tell you that it is easier to talk
25 about everything besides the physical and the sexual?

Ms. York - Cross - Ms. Jager

- 1 A. Yes.
- 2 Q. And is it -- in fact, she told you specifically that
- 3 it was difficult for her to talk about the details of
- 4 sexual abuse.
- 5 A. Yes.
- 6 Q. And isn't it true that you were questioning her in
- 7 the lobby of the Marriott Hotel.
- 8 A. We were; yes.
- 9 Q. And you weren't in a private place; right?
- 10 A. No.
- 11 Q. But you were asking her personal information.
- 12 A. Yes.
- 13 Q. And to describe sexual experiences she had with the
- 14 defendant?
- 15 A. Yes, we were asking her.
- 16 Q. Topics that would be embarrassing or intimate?
- 17 A. Certainly, they can be; yeah.
- 18 Q. And now your office is about five minute walk away
- 19 from the Marriott Hotel; isn't it?
- 20 A. Yes.
- 21 Q. And to get there, you would have to walk past the
- 22 United States -- the building that the United States
- 23 Attorney's Office is in; correct?
- 24 A. Yeah.
- 25 Q. And you didn't invite her to come to your office

Ms. York - Cross - Ms. Jager

1 which is less than five minutes away; did you?

2 A. No.

3 Q. You didn't mention that your office was close by?

4 A. I think we did actually mention where our office was
5 located but I can't remember what it was in relation to.

6 Q. Now at one point in the interview, she said something
7 to you about sending documents or photos you were
8 discussing to Mr. Spector; correct?

9 A. She told us she had photos of her working at a
10 restaurant in New York and asked if that was the kind of
11 thing she needs to send to the prosecutor.

12 Q. And you didn't tell her at that time that you didn't
13 work with Mr. Spector; did you?

14 A. No.

15 Q. And you didn't tell her that you don't work for the
16 United States Attorney's Office?

17 A. I didn't think I needed to be explicit about that
18 when I told her that I worked at the Federal Defenders.

19 Q. At the end of the interview, she seemed to be in a
20 pretty good mood; right?

21 A. Yes.

22 Q. When Ben Silverman, he gave her some suggestions
23 about places to listen to jazz music; right?

24 A. Yes, she asked us about some things to do to fill her
25 time in the City.

Ms. York - Cross - Ms. Jager

- 1 Q. About museums?
- 2 A. Museums and music; yeah.
- 3 Q. And so things were friendly between Ms. Yagoub and
- 4 you and Mr. Silverman when you left?
- 5 A. Yes.
- 6 Q. But then you and Mr. Silverman came back a few
- 7 minutes later and approached Ms. Yagoub again; correct?
- 8 A. We did.
- 9 Q. And you told her again that you were with the Federal
- 10 Defenders office; right?
- 11 A. That's correct.
- 12 Q. And isn't it true that then you approach her a final
- 13 time and at that point, she asked you if you represented
- 14 the defendant?
- 15 A. Yes, she said "Do you work for Mr. Yannai?"
- 16 Q. And isn't it correct that you showed her your I.D.s
- 17 again at this time?
- 18 A. Yes, because we were concerned that she was asking
- 19 again.
- 20 Q. And when she told you this, her demeanor changed;
- 21 right?
- 22 A. Yes, a bit.
- 23 Q. She wasn't in a good mood anymore?
- 24 A. She was not as forthcoming as she had been during our
- 25 interview.

Ms. York - Cross - Ms. Jager

1 Q. In fact, she was very surprised by who you were.

2 MS. CESARE: Objection.

3 THE COURT: Overruled.

4 A. I don't that she was surprised by who we were but she
5 seemed -- she did change; yes. I mean, we gave her the
6 same I.D. and the names we had given her before.

7 Q. Now when talking to witnesses, you know you have an
8 ethical responsibility to identify yourself as a
9 representative of the defendant; correct?

10 A. I believe that I have an ethical responsibility to
11 state clearly where I work and who I am.

12 Q. But not that you represent the defendant.

13 A. I think that's an extension of where I work.

14 Q. You didn't until the end explicitly tell the witness
15 that you represented the defendant.

16 A. Yes, she asked us at the end.

17 Q. And when you do this, witnesses -- this is in order
18 for witnesses to make a decision which they have a right
19 to whether or not to speak with you; correct?

20 A. I'm sorry, can you repeat that?

21 Q. They have a -- the purpose of the ethical
22 responsibility to identify yourself as a representative
23 of the Federal Defenders or the defendant is so that the
24 witnesses can decide whether or not they want to speak
25 with you because they have no obligation to do so. It's

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1 freely their choice to speak with you or not.

2 A. Yes, that's what I was told before doing this
3 investigation.

4 Q. Now, Ms. York, you didn't bring a German interpreter
5 with you for this interview; did you?

6 A. No.

7 MS. JAGER: Just one moment, please. No
8 further questions.

9 MR. SCHNEIDER: No further questions.

10 THE COURT: You can step down.

11 (Witness excused.)

12 THE COURT: Do you rest?

13 MR. SCHNEIDER: Yeah, the defense rests.

14 MR. SPECTOR: No rebuttal case, your Honor.

15 THE COURT: Ladies and gentlemen, so we're
16 going to take a recess until Tuesday. I think
17 realistically -- you see I give instructions to you but
18 normally before I can give the instructions to you, I
19 have to go over the instructions with the attorneys. And
20 my instructions may not be ready to go over with them
21 tomorrow. So, instead of having you sit around on Tuesday
22 morning, I suggest that you come in -- come in at 11:00
23 -- 11 o'clock. Have a nice weekend.

24 Ladies and gentlemen, let me remind you again
25 please don't discuss the case with anyone else. I told

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1 you that sitting on a jury is an interesting experience.
2 It's a unique experience. It's something you want to
3 talk to people about but you're not permitted to do so
4 until after the case is over because otherwise, you can
5 be influenced by what they say and we only want you to be
6 influenced by what you hear in this courtroom. And by
7 what other jurors have to tell you when you begin your
8 deliberations. So please again, remember, don't discuss
9 the case with anyone else or among yourselves. Thank
10 you.

11 (Jury exits the courtroom.)
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1 THE COURT: Okay.

2 MR. SCHNEIDER: Your Honor, we're moving for a
3 judgment of acquittal. Should we come up or should we
4 sit?

5 THE COURT: Come up.

6 MR. SCHNEIDER: We're renewing our Rule 29
7 motion for a judgment of acquittal as to each count. The
8 first count which is the Mann Act charge requires that
9 Mr. Yannai have the intent --

10 THE COURT: I don't see any point. My basic
11 view is that the government has no right to an appeal if
12 I grant the motion.

13 MR. SCHNEIDER: That's mine, too.

14 THE COURT: And whereas if you -- you know,
15 you're free to make this if the jury convicts, and then
16 I'll consider it on the merits when the government would
17 have a right to an appeal if I made a mistake and granted
18 it.

19 MR. SCHNEIDER: They were --

20 THE COURT: So that's my -- it's been my -- in
21 fact, the federal rules to a degree encourage it by
22 allowing a judge to reserve decision on the --

23 MR. SCHNEIDER: I won't make the argument then.

24 THE COURT: -- Rule 29 motion precisely for
25 this reason.

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1 MR. SCHNEIDER: I guess I understand the
2 Court's ruling. I will say this. We believe that Count
3 5, the importation of an alien for prostitution or
4 immoral purposes clearly does not lie. The government's
5 argument --

6 THE COURT: You know, we have to -- it all
7 depends on what -- how you define immoral purposes and
8 when we do the jury instructions, you can make that
9 argument but I need to have the --

10 MR. SCHNEIDER: That's fine.

11 THE COURT: I mean on its face, it's -- one
12 could argue that it's unconstitutionally vague. However,
13 in the context of a criminal case, you know, the issue is
14 whether it's unconstitutional as applied and in part,
15 that depends on how the courts have defined -- I mean
16 other than a First Amendment case, I don't want to get --

17 MR. SCHNEIDER: Yes, it's not First Amendment;
18 yes.

19 THE COURT: But it all depends on how the term
20 is defined. And we can deal with that when you both give
21 me your request to charge.

22 MR. SCHNEIDER: Okay.

23 MS. CESARE: Thank you.

24 MR. SCHNEIDER: Should we -- we should just
25 come back Tuesday at 10:00 or --

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1 THE COURT: Well I am going to try and e-mail
2 you the charge by tomorrow -- by the end of the day
3 tomorrow, so that you'll at least have it before Tuesday
4 morning.

5 MR. SPECTOR: And we'll submit a charge to you
6 this evening, your Honor.

7 THE COURT: Okay. But, you know, short of that
8 you could take a look at what Sand has to say.

9 MR. SCHNEIDER: Yes, we have.

10 THE COURT: Okay.

11 MR. SPECTOR: Thank you, Judge.

12 MS. JAGER: Thank you, Judge.

13 MS. STONE: Thank you, Judge.

14 THE COURT: Have a nice weekend.

15 Oh, by the way before you all go, I intend to
16 -- you know, my practice is to send testimony into the
17 jury. The transcript is prepared in such a way, then you
18 can just rip out the portions and where there were
19 objections. That is, where there's an objection that's
20 on a separate page that could be ripped out. And you
21 should also go over it to see if you think there are any
22 mistakes. The one advantage of doing it this way instead
23 of having a court reporter is that it's all recorded and
24 mistakes can be -- you know, the transcript can be
25 checked against the audio. And if you want to

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1 cannibalize my copy of the transcript --

2 MR. SCHNEIDER: We've been given copies.

3 MR. SPECTOR: Yes, we have them as well, your
4 Honor. Thank you.

5 THE COURT: Yes, but be sure -- it avoids delay
6 if you do it in advance.

7 MR. SCHNEIDER: You're saying we should take
8 the objections out ahead of time.

9 THE COURT: Yes, and make sure that there
10 aren't things that you think are -- do not accurately
11 reflect what was said, so that I can just send the
12 transcripts in without delay if the jury asks for it.

13 MR. SPECTOR: We'll do that over the weekend,
14 your Honor. Thank you.

15 MS. CESARE: Thank you, Judge.

16 (Matter adjourned)

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Defendant's Exhibit Marked In Evidence:

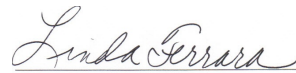
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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 26th day of May, 2011.



Linda Ferrara

Transcription Plus II, Inc.

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